136-649

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1889.

No. 281.

WILLIAM SENSENDERFER, PLAINTIFF IN ERROR,

vs.

SAMUEL SWISHER.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MISSOURI.

FILED JANUARY 3, 1887.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1889.

No. 281.

WILLIAM SENSENDERFER, PLAINTIFF IN ERROR,

vs.

SAMUEL SWISHER.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MISSOURI.

INDEX.

	Original.	Print.
Citation	*a*	1
Proof of service of citation	*b*	1
Writ of error	*c*	1
Return to writ of error	*d*	2
Caption	1	2
Transcript from circuit court of Pettis Co.	2	3
Cross-bill	2	2
Stipulation to amend cause from United States court to State court, &c.	9	6
Amended answer	11	7
Reply to amended answer	19	9
Orders continuing cause by consent	20	10
Order taking cause under advisement	21	11
Judgment	22	11
Order overruling motions for new trial and in arrest of judgment	26	13
Order allowing appeal, &c.	27	13
Bill of exceptions	28	13

JUDD & DETWEILER, PRINTERS, WASHINGTON, JANUARY 13, 1890.

	Original.	Print.
Testimony of Samuel Swisher	29	14
R. D. Means	37	17
M. M. Lampton	46	20
Thomas O'Gary	52	22
Gustav Reiche	54	22
Exhibit A (G. Reiche)—Letter of Commissioner of General Land Office to register and receiver, Feb. 12, 1863	57	24
Testimony of George Reiche	59	25
Gustav Reiche (recalled)	60	25
Exhibit E (G. Reiche)—Letter of Acting Commissioner General Land Office to register and receiver, Boonville, Mo., Nov. 15, 1872	62	26
Exhibit F (G. Reiche)—Transcript from official tract book in U. S. Land Office at Boonville, Mo.	64	27
Testimony of Jno. N. Gott	68	28
United States patent to Benj. W. Brice, Nov. 10, 1859	73	30
Certificate of register at Warsaw, Mo., July 1, 1858	75	30
Admission of defendant as to county plat	76	31
Copy of plat in recorder's office	77	31
Mortgage of Lampton to Caldwell (not set out)	78	32
Deed of Lampton to Allen, trustee (not set out)	78	32
Deed of Lampton to Mansur (not set out)	78	32
Mortgage from Mansur to Lampton (not set out)	78	32
Deed from Mansur to Swisher (not set out)	78	32
Copy from register of lands of Mo.	79	33
Copy from register of lands of Mo.	81	34
Tax books admitted in evidence (not set out)	82	34
Testimony of Samuel Swisher (recalled)	83	35
H. C. Sinnett	83	35
Will of B. W. Brice (not set out)	84	35
Testimony of R. D. Means (recalled)	84	35
Plaintiff closed	85	36
Defendant opens	85	36
United States patent to Wm. Sensenderfer, Jan. 10, 1871	85	36
United States patent to M. M. Lampton, April 1, 1859	88	37
Letter of Commissioner General Land Office to register Plattsburg, Mo., May 22, 1855	91	38
Letter of Commissioner General Land Office to John Montgomery, Jr., Nov. 15, 1872	95	40
Lampton's application, June 17, 1856	98	41
Testimony of Wm. Sensenderfer	100	42
Testimony of A. C. Clark	107	45
Defendant closed	112	46
Plaintiff opens in rebuttal	112	46
Testimony of Jno. Montgomery	112	46
Motion for new trial	114	47
Motion in arrest of judgment	115	48
Order allowing appeal, &c.	116	48
Clerk's certificate	117	48

	Original.	Print.
Assingment of errors	118	49
Submission	119	50
Order referring causes to commissioners	119	50
Judgment	120	50
Opinion	121	51
Order allowing writ of error, &c.	125	52
Bond	126	52
Clerk's certificate	127	54

a The United States of America to Samuel Swisher, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, D. C., on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Missouri, wherein William Sensenderfer, plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable John W. Henry, chief justice, judge of the supreme court of the State of Missouri, this — day of June, in the year of our Lord one thousand eight hundred and eighty-six.

JNO. W. HENRY,
Chief Justice.

b UNITED STATES OF AMERICA, } *ss:*
Western District of Missouri, }

I hereby acknowledge due service of the within citation this 24th day of June, A. D. 1886.

GEO. P. B. JACKSON,
Attorney for Defendant in Error.

[Endorsed:] United States — Court, western district of Missouri, Eastern division. Samuel Swisher, respondent, *vs.* Wm. Sensenderfer, appellant. Citation. Filed ——. 187–. —— ——, clerk.

c UNITED STATES OF AMERICA, *ss:*

{ Seal of the United States Circuit Court for the Western District of Missouri, Eastern Division. }

The President of the United States to the honorable the judges of the supreme court of the State of Missouri, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court, before you, at the October term, 1884, thereof, between Samuel Swisher, respondent, and William Sensenderfer, appellant, a manifest error hath happened, to the great damage of the said appellant as by his complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, D. C., on the second Monday of October next, in the said U. S. Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said U. S. Supreme Court may cause further to done be therein to correct that error what of

right and according to the laws and customs of the United States should be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this twelfth day of June, in the year of our Lord one thousand eight hundred and eighty-six.

Issued at office, in the city of Jefferson, with the seal of the circuit court of the United States for the western district of Missouri, eastern division, dated as aforesaid.

H. C. GEISBERG,
Clerk Circuit Court United States, Western District of Missouri.

Allowed by—
JNO. W. HENRY,
Chief Justice.

d [Endorsed:] No. —. United States circuit court, western district of Missouri, eastern division. Samuel Swisher, respondent, *vs.* Wm. Sansenderfer, appellant. Writ of error to the supreme court of the State of Missouri. Returned and filed — day of ——, 187–. —— ——, clerk.

Return to Writ.

UNITED STATES OF AMERICA, }
State of Missouri, } *ss:*

Supreme Court.

In obedience to the command of the within writ I herewith transmit to the Supreme Court of the United States a duly certified transcript of the record and proceeding in the within entitled case, together with all things concerning the same.

In witness whereof I hereto subscribe my name and affix the seal of said supreme court, at the city of Jefferson, this 18th day of September, A. D. 1886.

[Seal of the Supreme Court.]

HENRY W. EWING, *Clerk.*

1 UNITED STATES OF AMERICA, }
State of Missouri. }

Be it remembered that heretofore, to wit, on the 10th day of March, A. D. 1882, a transcript of the record and proceedings of the Pettis county circuit court of the State of Missouri in the above-entitled cause was filed in the office of the clerk of the supreme court of the State of Missouri by the said appellant, William Sensenderfer, which said transcript was in the following words and figures, to wit:

2 STATE OF MISSOURI, }
County of Pettis. }

Pleas before the circuit court of Pettis county at a term begun and holden in the city of Sedalia, county and State aforesaid, on the 23rd day of January, 1882, before the Honorable John P. Strother, judge of the sixth judicial circuit of the State of Missouri.

Style of Case.

SAMUEL SWISHER, Complainant, }
vs.
WILLIAM SENSENDERFER, Repondent. }

Be it remembered that heretofore, to wit, on the — day of ——, 18-, a cross-bill was filed in the above-entitled cause in the circuit court in and for the county of Pettis, in words and figures, to wit:

In the Circuit Court of the United States, Western District of Missouri.

SAMUEL SWISHER, Complainant, }
vs.
WILLIAM SENSENDERFER, Repondent. }

3 *Cross-Bill.*

To the honorable the judges of the United States circuit court in and for the western district of Missouri, sitting in chancery:

Humbl*ing* complaining unto your honors, your orator, Samuel Swisher, respectfully showeth and states that he is a citizen of the county of Pettis and State of Missouri, and that the respondent, William Sensenderfer, is a citizen of the county of Johnson in said State.

Your orator further states that heretofore, on the 14th day of August, 1873, the said respondent commenced his action in ejectment in the circuit court of and in the county of Pettis aforesaid against your orator for the possession of the following-described real estate in said county, viz: west half northeast quarter, ¼, section 32, township 44, range 23, and in due time and issue was formed in said court.

Your orator further avers that afterwards, namely, on the — day of ——, 187-, at the — term of said Pettis county circuit court, the said Sensenderfer, plaintiff in said suit filed his petition for removal of said ejectment suit to this court for reasons, as stated in his
4 petition, that the cause of action therein arose under the Constitution and laws of the United States; and upon the hearing of said petition the said circuit court of Pettis county ordered that said cause be removed therefrom and certified to this court, — was accordingly done, and the said cause is now pending on the law side of this honorable court.

And your orator further showeth unto your honors that in said cause your orator desires to plead & rely upon an equitable defense, and in obedience to the rules & requirements and the direction of this court your orator presents this his cross-bill in said action.

And your orator, complaining of said respondent, states that under an act of Congress of the United States approved March 3d, 1855, entitled "An act in addition to certain acts granting bounty land to certain officers & soldiers who had been engaged in the military service of the United States," the land aforesaid was thereafter subject to entry under military warrant as contemplated and provided by said act.

That one Leah Goodin, widow of William Goodin, private Captain Hargroves company & Indiana militia, war of 1812, held
5 warrant No. 26,384 for 80 acres of land, which said warrant was duly assigned by said Leah Goodin to one Mitchel M. Lampton, in whose favor the same was afterwards duly located upon the land aforesaid, which said entry was evidenced by an entry upon the plat-book and record kept therefor by the officers of said Government at the district land office in said State, duly kept therefor, & which said officers then and there duly issued to said Lampton a duplicate certificate evidencing such entry.

That immediately thereupon the said Lampton entered into and took possession of said land and thereafter continued to hold, enjoy, and use said — as his own, paying the taxes thereon openly and notoriously under claim of title thereto from said Government.

That said Lampton afterwards, viz., on the 11th day of October, 1860, by deed of conveyance, granted, bargained, and sold said land for and in consideration of the sum of $—— to one George Mansur, who immediately thereon entered into and took possession said land
6 under claim of title thereto under said Lampton, and so continued to hold the possession thereof and to use and enjoy the same and pay the taxes thereon as his own land until the 11th day of October, 1865, when, by deed of conveyance, he granted, bargained, and sold said land to your orator for and in consideration of the sum of $——, who immediately thereon entered into and took possession of said land under claim of title thereto under said Mansur, and so continued to hold the possession thereof and to use and enjoy and pay the taxes thereon as his own land to the present time.

That all of said several deeds of conveyance were duly recorded in the office of the recorder of deeds in and for the county of Pettis aforesaid, as in such cases is by statutes made and provided.

That your orator has ever since been in possession of and has used and enjoyed *to* said land as his own, paying the taxes thereon under claim of title thereto.

That he and those under whom he claims title, prior to the time of the pretended entry and purchase of the —, respondent, said
7 Sensenderfer, as hereinafter stated, had in good faith made lasting and valuable improvements thereto, and likewise in perfect good faith had bought and paid the said purchase-money therefor.

That, as your orator is informed and charges, the said Sensenderfer, with full knowledge and notice of the facts aforesaid, intending to wrong, injure, and cheat your orator, did fraudulently obtain and procure to be issued to him from the Government of the United States a patent to said land, and now sets up a claim to said land in his said action of ejectment to recover said land under and by virtue of said patent, with notice of the facts, as your orator is informed and charges, that the said Lampton had so entered said land as aforesaid, and that he and those claiming under him had neglected and failed to obtain a patent therefor, as they were in law and equity entitled to do and have.

Wherefore your orator humbly prays, in view of the premises, that the said Sensenderfer be enjoined and restrained by the proper order of this court from the further prosecution of his action of ejectment until the matters and things herein stated and com-
8 plained of by your orator can be inquired into and the facts thereof ascertained and determined by the finding and decree of this court; and, further, that if upon the final hearing of this cause the facts be ascertained by the court to be as stated by your orator that the said respondent be adjudged and decreed by this court to hold the right, title, and interest and estate acquired by him by virtue of his said patent in trust for the use and benefit of your orator, & that the same be divested out of him and vested in your orator, and that he be perpetually restrained and enjoined from the further prosecution of his said action of ejectment, and for such other and further relief as to this court may seem just and equitable in the premises.

PHILLIPS & VEST AND
JOHN MONTGOMERY, JR.,
Solicitors for Compl.

Samuel Swisher, above-named complainant, being duly sworn, on his oath states that the above and foregoing bill and the matters therein stated he believes to be true.

SAMUEL SWISHER.

9 Subscribed and sworn to before me this 30th day of April, 1878.

[SEAL.] C. N. TONZALIN,
Notary Public.

Qualified July 17, '76, for term of 6 years.

And afterwards, on the 22d day of April, 1879, agreement and stipulation by and between the parties in said cause were filed in the said circuit court of the United States; which agreement and stipulation are in words and figures following:

Stipulation and Agreement.

In the Circuit Court of the United States, Eastern Division, of the Western District of the State of Missouri.

WILLIAM SENSENDERFER, Pl't'ff,
vs.
SAMUEL SWISHER, Def't.

SAMUEL SWISHER, Complainant,
vs.
WILLIAM SENSENDERFER, Respondant.

It is hereby agreed and stipulated by and between the above-named parties that the above-entitled causes now pending in the above-named court shall be remanded and transferred to the circuit court of Pettis county, Missouri, and stand for trial in said Pettis circuit court, at the May term thereof, 1879, and that the transcript of the record and the original papers, pleadings, &c., in said causes as the same now exist in said United States circuit court may be transferred to said Pettis circuit court, and entered and filed therein as if originally brought and made therein, and in case the said United States circuit court should refuse permission to withdraw the papers, pleadings, &c., as above provided, it is further agreed and stipulated that copies thereof may be made by the counsel or either of them herein and filed in said Pettis circuit court and proceeded on as *as* if originally filed therein.

And it is further stipulated and agreed that the costs in said causes in the said United States circuit court shall be taxed and paid half and half by each of said parties, and that the said costs shall abide the final result of said cases in the said Pettis circuit court, and the whole thereof be paid by the losing party.

This second day of April, 1879.

WILLIAM SENSENDERFER,
By his Attorneys and Solicitors.
SNODDY & SHORT,
JOHN F. PHILLIPS &
JOHN MONTGOMERY, Jr,
Att'ys and Solicitors for Samuel Swisher.

And afterwards, to wit, on September 13th, 1880, an amended answer was filed in the above-entitled cause; which said answer is in words and figures as follows, to wit:

STATE OF MISSOURI, } ss:
Pettis County, }

Amended Answer of Defendant.

In the Circuit Court. Sept. Term 1880.

SAMUEL SWISHER, Pl'ff, }
vs.
WILLIAM SENSENDERFER, D'f't. }

Now, at this time, comes again the defendant and for amended answer to the petition or bill of the plaintiff, admits that as
12 stated in the petition, this defendant commenced in this court his action of ejectment to recover the land described in the petition and that said cause was removed to the circuit court of the United States where thereafter this suit was begun and said cause and this one have since by consent and agreement of both parties been remanded and removed to this court, and are both now pending in this the circuit court of Pettis county, Missouri, and defendant admits that said Swisher is desirous of pleading and relying upon the matters set up in his petition in this case as a defense in and to said action, and defendant says in this court according to the law and practice prevailing therein he can and may interpose said matters as a defence to said action of ejectment by way of and in answer filed therein, and therefore defendants says there is another action pending between said parties for the same cause as herein embraced and plaintiff cannot therefore maintain this action.

And defendant prays that this action be dismissed, and he have judgment for his costs herein expended and for all proper relief.

13 And, further answering, defendant admits that he obtained from the United States a patent to said land, and sets up claim under and relies on said patent to recover said land, but defendant denies each and every other allegation in said petition except that plaintiff was in possession of said land at the institution of this action.

And defendant asks to be discharged with his costs and all proper relief.

Defendant, further answering, says instead of said Mitchell M. Lampton entering the land herein in dispute with said military bounty land warrant, No. 26384, as stated in the petition or bill, said Lampton, on the 17th day of June, 1856, at the land office of the United States, at Warsaw, Missouri, made application to the proper officer to locate and did locate said land warrant on and enter with the same the west ½ of the northeast ¼ of section No. 33, township 44, range 23, then subject to said entry and said entry was duly entered on the plat book and records of said office by the proper officers, and was duly reported by them to the General Land
14 Office of the United States and to all proper officers; that said land in section 33 was the land and only land embraced in

said duplicate receipt or certificate issued and delivered to said Lampton, if any such was so issued; that in pursuance of said entry and reports there was duly issued by the Government of the United States a patent to said Lampton, dated the 1st day of April, 1859, conveying to him said land in sec. No. 33 so entered by him; and defendant says that the land here in dispute was vacant and subject to private entry, and so shown on the books and records of the General Land Office of the United States and of the district land office, at Boonville, Mo., within which district the same then was and now is, and relying on the facts of said land being so vacant and that it so appeared, and, on the representation of the officers of said land offices, this defendant, in good faith, on the 27th day of September, 1870, entered said land at said land office in Boonville, and bought the same from the said United States for cash, and paid *him* therefor, and without any knowledge or notice of any claim of
15 plaintiff or any one adverse to the United States and this def't.

And on the 10th day of January, 1871, there was duly issued and delivered to def't a patent from said United States, signed by proper officers, conveying said land so entered by him and involved in this suit to this defendant; and defendant says it would be inequitable and against good conscience to deprive him of said land by reason of any of the matters or all of them stated in the petition or facts in this case.

Wherefore he asks to be discharged with his costs and all proper relief.

And, further answering herein, defendant says plaintiff can only claim relief herein by reason of a claim on his part that there was error or mistake on the part of said Lampton or the officers of the United States land officers or both whereby said Lampton entered or seems to have entered the said land in sec. No. 33 when he wanted to enter the land here in dispute, and pl'ff's action is really and in fact to correct such supposed error or first to make such error appear and then correct it.

And defendant says that while he does not admit, but
16 denies, that there was any such error, yet, whether there was or not, this action cannot be maintained, because there was all the while full and ample provisions made by the acts of the Congress of the United States whereby to correct such errors, and the same can only be corrected under and as pointed out by said acts of Congress, and not by this court.

That there is no power or jurisdiction in this court to enquire into the matters sought to be enquired into by plaintiff or to give the relief sought by pl'ff, and if it could, the said pl'ff and those under whom he claims having rested now for more than 20 years and until the rights of defendant, by virtue of his entry and purchase of said land, have intervened, and taken no steps for the relief now here sought, equity will not now lend its aid to him or grant him the relief prayed for.

And defendant says no cause of action or ground of relief in this cause has accrued to the plaintiff or those under whom he claims or

any of them within ten years next before the commencement
17 of this action, and said action is barred by limitation, and defendant pleads the same here in his defense.

And defendant further says no cause of action or ground of relief herein has accrued to the plaintiff or those under whom he claims, or any of them within 20 years next before the commencement of this action, and said action is barred by limitation, and defendant now pleads the same in his defense to this action.

And defendant now prays to be discharged with his costs and all such other and further relief as in equity & good conscience he is entitled to, and especially does defendant ask for judgment and decree; that plaintiff has no title, claim, or interest in or to said land, and for the recovery of the possession thereof by defendant, and for execution and writ of possession to put defendant into full possession of said premises.

And for further answer and for ground for affirmative relief herein defendant says that on the 28th day of February, 1871, this defendant, William Sensenderfer, was the owner of and entitled to
18 the possession of said west ½ of the northeast ¼ of section 32, township No. 44, range No. 23, in Pettis county, Missouri; that being so the owner of and entitled to the possession of said premises, the said plaintiff, on the 1st day of March, 1871, entered into the same, and has ever since unlawfully withheld the possession of said premises from defendant, to his damage, in the sum of one thousand dollars; that the monthly value of the rents and profits of said premises is twenty-five dollars per month.

Wherefore def't prays judgment for the recovery of the said premises and the possession thereof, and one thousand dollars for his damage for the unlawful withholding the possession of the same from plaintiff, and for twenty-five dollars per month for the rents and profits of said premises until the possession is delivered to the def't, and for costs and all other proper and equitable relief.

SMITH & SHIRK,
Att'y- for Defendant.

And afterwards, to wit, on the 14th day of September, 1880, it being the 4th day of the September term, 1880, of said court,
19 there was filed herein a reply, which is in words and figures following, to wit:

Pl'ff's Reply to Amend. Ans.

In the Circuit Court of Pettis County, Missouri. September Term, 1880.

SAMUEL SWISHER, Plaintiff,
vs.
WILLIAM SENSENDERFER, Defendant.

Now again comes the plaintiff and, — reply to that portion of the answer in which the defendant pleads the pending of another suit,

says that it is true that at the time the bill herein was filed there was pending such an action of ejectment as the bill itself discloses; that said action of ejectment was then pending in the circuit court of the United States for the western district of Missouri; that pursuant to the practice and rule of said court the plaintiff was required instead of setting up in his answer to said action of ejectment his equitable title and defense he filed his said cross-bill, which
20 abated said action of ejectment until the termination of said cross-bill; that by agreement in writing between the parties the said causes were transferred to this Pettis circuit court to be tried without changing their status as if in said United States circuit court.

Plaintiff, further replying to the remaining allegations of new matter set up in the amended answer, denies each and every allegation thereof not already pleaded in petition herein, and having replied plaintiff demands judgment as prayed for in the petition.

PHILIPS & JACKSON,
Att'ys for Plaintiff.

And afterwards, to wit, on the 15th day of September, A. D. 1880, it being the 5th day of the September term, 1881, of said circuit court, the following further proceedings were had in said cause, to wit:

Record Entry No. 1. *Continuance.*

SAMUEL SWISHER
vs.
WM. SENSENDERFER.

21 Now, at this day, this cause is continued generally by consent.

And afterwards, to wit, on the 8th day of January, A. D. 1881, it being the 6th day of the January term 1881 of said circuit court, the following further proceedings wer- had in said cause, to wit:

Record Entry # 2. *Continuance.*

SAMUEL SWISHER
v.
WM. SENSENDERFER.

Now, at this day, this cause is continued generally by consent.

And afterwards, to wit, on the 30th day of January, A. D. 1882, it being the 24th day of the January term 1882 of said circuit court, the following further proceedings were had in said cause, to wit:

Record Entry # 3. Cause Submitted.

SAMUEL SWISHER
v.
WM. SENSENDERFER.

Now, at this day, this cause coming on for trial, come the
22 parties hereto, by their respective attorneys, and this cause is taken up and submitted to the court, and, there not being sufficient time to conclude the evidence, the cause is continued until to-morrow morning.

And afterwards, to wit, on the 31st day of January, A. D. 1882, it being the 25th day of the January term 1882 of said circuit court, the following further proceedings were had in said cause, to wit:

Record Enty # 4. Judg't for Pl'ff.

SAMUEL SWISHER
v.
WILLIAM SENSENDERFER.

Now, on this day, again comes the parties hereto, and the further hearing of this cause is renewed, and the court, after hearing the evidence and the argument of counsel and being fully advised in the premises, doth find the issue for the complainant; that from the pleadings and evidence the court finds that under an act of Congress of the United States, approved March 3d, 1855, entitled An act in addition to certain acts granting bounty land to certain officers and soldiers who had been engaged in the military service of the United States, the
23 land described in the petition, to wit, the west half of the northeast quarter of section thirty-two (32), in township forty-four (44), of range twenty-three (23), in Pettis Co., Mo., was therefore subject to entry under military land warrant as contemplated and provided in said act. That afterwards, to wit, on the 17th day of June, 1856, one Mitchel M. Lampton with such warrant, No. 26384, entered the above-described land, at the local Government land office, at Warsaw, Mo., and received from the proper officers of Government in charge of said district land office a certificate in due form evidencing such location and purchase of said land; that thereupon said officers of said Government otherwise evidenced said location and sale of said land by an entry upon the plat book, and record kept therefor by them in said land office, and immediately thereafter the said Lampton took immediate possession of said land, and continued to hold, improve, and occupy the same under claim of his said entry, openly and notoriously, and advers-ly until the 11th day of October, 1860, when he conveyed the same by and in
24 fee simple for a valuable consideration to one George Mansur, who immediately entered into possession of said land under

claim of title under said Lampton, and so continued to hold the same, openly, notoriously, and advers-ly until the 11th day of October, 1865, when by deed he conveyed the same in fee for a valuable consideration to the complainant herein, Samuel Swisher, who thereupon entered into possession of said land under claim of title from said Mansur, and so continued to hold the same, open-, notoriously, and adversely until the present time; that the complainant, and those under whom he claims title as aforesaid to said land prior and up to the year 1871, had paid the taxes on said land, and made lasting and valuable improvements thereon in good faith and full belief that they were the owners thereof; that on or about the 10th day of January, 1871, the respondent, Wm. Sensenderfer, procurred from the Government of the United States a patent granting and conveying the legal title to said land to him under an alledged entry of said land, claimed by him to have been made on or about the 27th day of September, 1870, at the local land office at Boonville, Mo.; which said patent the said Sensenderfer had recorded in the recorder's office of Pettis county, Mo., in Book —, p. —, and was at the time of the institution of this action asserting title thereunder to said land, and seeking to obtain the possession thereof against the complainant herein as alleged in the complaint.

And the court finds that at the time of the entry last aforesaid and the issuing of the patent to said Sensenderfer, the said Samuel Swisher by reason of the premises aforesaid was the equitable owner of said land and entitled to the patent therefor in the name of said Mitchel M. Lampton; that the said Sensenderfer entered said land and obtained said patent with notice of the facts aforesaid, and of the said equitable right and title of said Swisher to said land and that he took said patent and legal title in trust for the use and benefit of the said Samuel Swisher.

It is therefore considered and adjudged and decreed by the court that the legal title so acquired and held by the said Wm. Sensenderfer under and by virtue of said patent to the land aforesaid be, and the same is hereby, forever divested out of him, and all the right, title, interest, and estate so acquired and held by him as aforesaid be, and the same is hereby, vested forever in the said Samuel Swisher in fee. It is further ordered and adjudged by the court that the said complainant recover of the said William Sensenderfer his costs in this behalf had and that he had thereof execution.

And afterwards, to wit, on the 1st day of February, A. D. 1882, it being the 26th day of the January term, 1882, of said court, the following further proceedings were had in said cause, to wit:

Record Entry # 5.—Mo. for New Trial and Mo. in Arrest.

SAMUEL SWISHER
vs.
WILLIAM SENSENDERFER.

Now, at this day, comes the defendat herein and files motion for a new trial, which motion, all parties being present, being now
27 taken up and submitted to the court, and the court having seen and heard the same and being fully satisfied in the premises overrules said motion; to which action of the court in overruling said motion defendant then and there at the time duly excepted.

And now defendant files motion in arrest of judgment herein, which motion is now taken up and submitted to the court, and the court, having seen and heard same and being fully advised in the premises, overrules said motion; to which action of the court in overruling said motion, defendant then and there at the time duly excepted.

And afterwards, to wit, on the 3d day of February, A. D. 1882, it being the 28th day of the January term, 1882, of said circuit court, the following further proceedings were had in said cause, to wit:

Record Entry No. 6. Bill of Except'ns. Affidavit for Appeal.

SAMUEL SWISHER
v.
WM. SENSENDERFER.

28 Now, at this day, comes the defendant and files his bill of exceptions herein, properly signed and allowed by the court, and also files his affidavit herein, praying an appeal of this cause to the Supreme Court, which said appeal is by the court granted—

Which said bill of exceptions is in words and figures following:

STATE OF MISSOURI, } *ss:*
Pettis County,

Bill of Exceptions.

In the Circuit Court. Jan. Term, 1882.

SAMUEL SWISHER, Pl'ff,
v.
WM. SENSENDERFER, Def't.

Be it remembered that in the trial and determination of this cause in the circuit court of Pettis Co., Mo., at the Jan. term, 1882, the following proceedings were had, to wit:

After the reading of the pleadings herein the defendant's
29 counsel stated that they waived the matter alleged in the answer relative to the pendency of another suit between these parties, as this case, pursuant to stipulations was transferred from U. S. court to this court to be tried here on the pleadings as framed in U. S. court.

Plaintiff to sustain the issues on his part introduced evidence as follows:

Pl'ff's Direct Examination.

Pl'ff Samuel Swisher, as a witness, sworn. Defendant objected to any evidence, because the petition states not facts sufficient to constitute a cause of action in this court and because this court cannot entertain a case to correct any error of the officers of the Government, except only where the said officers have made a mistake in a question of law and where a patent has been obtained by actual fraud, and the alleged fraud is not sufficiently set out in the petition.

Objection overruled and def't excepted at the time.

Witness testified: I bought this land from Geo. Mansur in
30 1865, in Oct. I have not and never had any original deeds to this land, except the one to me. I took possession in '65, & been so ever since continuously. When I bought it there were 100 acres improved in the farm, and I fenced and improved the balance right away. The south ½ of this 80 in dispute was under fence in cultivation when I bought —. I fenced the balance the next spring & broke it, and it has been in cultivation ever since.

The dwelling-house was there, & 100 yards east of the south 40 of this 80 I bought 500 acres, including this 80, in all. 20 acres was disconnected and lay at a distance from the balance.

The body of it, 180 acres, lay in an oblong square, longest east & west, lying east & south of this 80, which was part of the 480 acres. I got it all from Mansur, & there was 100 — of it all in fence, including the south ½ of the 80 in dispute & balance around the house. In 1870 this 80 acres was all under fence and in cultivation. My orchard came to the line of this 80, but not on it, but was enclosed with same fence. I lived there then
31 and have ever since I bought. This 80 acres was enclosed then (1870) with hedge old enough to turn stock. It was not hedge all around, but there was a cross-hedge which made the same as if it went around. When I bought I knew nothing of any defect in title. When I bought Mansur was living on the place. He boarded with me 2 or 3 months after, & then, his wife having left him before I came, then he went off & I do not know what became of him. The last I saw of him was in Sedalia at the time we settled up and I got my deed. I have made all enquiry I could & could not find where he is. I wrote a letter to his folks in Ohio, and got no answer to it. I never saw his title papers to this land. He left his trunk at my house when he went away, and he never sent

for it. I finally opened it & found a large lot of scraps of papers as though the mice had eaten them. The papers were so cut I could not tell what they were. There seemed to have been a good many papers. They had writing on them. Could not make
32 out anything except an account book. When I saw him in Sedalia he said he would be to my house that evening or next day, but never came. I finished paying him in Sedalia that day. I have inquired everywhere for him since, but could never hear of him.

I knew about the mortgage on this land from Mansur to M. M. Lampton. I paid it off, about $1,500. The time I saw Mansur last was when I paid that off. The mortgage was entered satisfied that day. I found also that there was a judgment of $600.00 against Mansur that he had not told me of, & I paid it and the Lampton mortgage the same day. I opened the trunk about 3 months after he left. I paid $3750, including all I had paid. I paid the incumbrances & the balance to him. I do not know how long Mansur was in possession of this land. I first saw him there on the land in the spring of 1865, before the war ended. I first saw Sensenderfer in 1872, in fall or summer, at my house. He came alone.
33 He rode up to the door and called for dinner & horse feed. After dinner he told me he had 80 acres of my land. We talked, I suppose, six hours or more. He told me all about how he entered it, but I can't recollect how it was done. He talked like he wanted to sell to me and I asked him how much he would take for it. He said he would not tell me then. I saw him afterwards and he asked $25 an acre, & I told him he could keep it.

When he come there the first day he said he did not know where it was on the farm. I showed him where it was, when he showed me the numbers. I didn't know which 80 it was until then. I asked him why he put people to so much trouble by entering their improved land and why he did not enter wild land. He said he would not have that; would not pay the taxes on raw land for it; that he would not have it if you would give it to him. He said he had been broken up twice in St. Louis in merchandising. He took this way to get a piece of land; that he had been at the
34 land office at Boonville looking up mistakes made in land entries.

This land is 1½ miles from M., K. & T. R'y & 3 miles from Windsor, Henry Co. Windsor was not then very large. It was an old town and trading place.

(Plat book shown to witness.)

Witness says the land I bought was 3, 80 S., in 32, & 3 in 33, 44, 23, and included all the Lampton entries shown here on this plat N. E. of 32 & N. ½, S. E. 32 & N. W. 33 & N. ½ S. W. 33. My house was east of S. 40 of this 80 & some distance from south line. I am in my 70th year.

(Pl'ff here read a deed from Geo. Mansur and wife to plaintiff), date Oct. 11th, 1865, conveying to plaintiff the land in dispute with other lands in consideration of $3,750.00. Recorded January 27th,

1866, in Book L, at page 359, again recorded April 23d, 1881, in book # 16, at page- 331 & 33.

Pl'ff Cross-Examined.

SWISHER cross-examined:

When I bought of Mansur I enquired if a lawyer wrote
35 the deed. I did not enquire of Mansur at all as to title. I did not get the deed written, Mansur did it. I don't know as I asked anybody as to the title. I got no abstact of title. Mansur's wife went to Ohio when she left him.

When I wrote to find him I did not write on the envelope to have it returned, but I put in it an envelope duly addressed and stamped for a return letter to me. I wrote to his wife. I got no reply, and the letter never came back; I never heard of it. I wrote this letter after Sensenderfer came and said he owned the land. I think Sensenderfer came to my house in the fall of 1872. I wrote to Mansur to find out whether he had the title papers to this land, and I wanted him for a witness.

As to the papers in Mansur's trunk, there were parts of them so we could make out a few words, but could not read or make out any instrument; can't say whether part was writing and part printed. I threw the scraps of paper out, but have the trunk at my house yet. I do not recollect asking Mansur about his title. I
36 never looked at the plat in recorder's office in Pettis county nor got any one to when I bought & not till this suit began.

When Sensenderfer came to my house he said he had entered 80 acres or had *an* 80 acres of my land. After we talked awhile he would not let me claim it. He said it was his. I showed him where it lay. He said he did not know which 80 it was. He let on like he didn't know where it lay. I had just got up out of a bed of sickness then. He told me the numbers of the land, and I showed him where it lay. I asked him why he was entering land that was improved and putting people to trouble; why he did not enter wild lands. He said, "I would not have it if you would give it to me." He would not pay taxes on it. I did not then know of any unentered land in that country. I got some excited over the matter, and I think he did. He tried to make me believe it was his land. He told me about a piece of land in sec. 33 that he said Lampton had entered. I do not recollect well all he told me. A deed was afterwards got from Lampton to the 80 acres in sec. 33 and I
37 gave it up. It was not by my consent. I knew something about its being obtained. I did not bring suit against Foreman *foreman* for possession. My att'y did it. I knew something about it.

Pl'ff Re-examined.

Re-examined:

The lawyer who drew up the papers between Mansur & I was in an office with Judge Wright & some one else—a large, tall man, with black hair.

Sensenderfer did not know where the 80 was in reference to my house, and I went out to show him.

R. D. Means Testified for Plaintiff.

R. D. MEANS testified:

I live in S. W. part of Pettis Co.; am 58 years old; lived there since 1832. I know Mark L. Means; he was a second cousin of mine; knew him 25 or 30 years; he died during the war; he was an officer of land office at Warsaw. Certificate to plat is his. (Def'ts counsel admitted certificate & signature & plat to be in handwriting of Mark L. Means, register of land office.) I do not
38 remember when he went in; he was there in 1858. I entered a good deal of land at that land office for others and 600 or 700 acres for myself. I live- 1½ miles from this land in controversy in 1855 & '6. In all probably I have entered 2,000 or 3,000 acres. When men came in there to enter land they often came to me. It was 25 miles to Warsaw. I was at Warsaw land office 2 or 3 dozen times a year. My father was one of 1st settlers, and was there before the land was surveyed by the Government. When this land was surveyed by the Government I carried the flag while surveying some townships around there and then helped to survey the land in controversy; this was in 1830, something —. I knew every piece of land that was entered in that neighborhood. When at the Warsaw office I would look to see if any new land was entered. When a man entered land they entered it on the plat book by writing the name across the plat book, and you could tell by looking at the plat book whether a piece of land was vacant or not. If a
39 name was written across a piece of land it indicated that it had been entered by that person.

I knew this piece of land from the time it was surveyed by the Government until it was entered, and ever since.

I never knew M. M. Lampton till I met him in Georgetown in the fall of 1855; I met him there at Kidd's Hotel, in Georgetown; he came then on a stage from Boonville; Lampton asked me about land, and I told him there was good land vacant in my neighborhood.

He came to my house the 2d day after and I showed him the land I had told him about, and he was pleased with it.

He and his friends went away & came back, and we went over the land. I gave him the numbers, & I went with him to Warsaw & he entered some land and I went back to Ky. At this time he entered N. W. ¼ 33 & E. ½ N. E. 32. When he came back in the spring of 1856 he and I went to the land office at Warsaw, & he entered some more—a row of 40's south of that formerly entered & one 40 south of the disputed land. I think I remember his
40 entry N. E. S. W. 33; that was the last 40 he entered, about July, 1856. After Lampton had made his entries in spring of 1856 there was a large body of vacant land on the west of his entries, between him and a man named Hammons, and it was understood between them that they would enter all that land.

A man by the name of Smoot, from Illinois, came in and looked around a day or two & went to the land office and came back and said he had entered this W. ½ of N. E. 32 in controversy. Lampton had before entered the forty north of it, so he thought no one would take this for awhile. Lampton was scared when he thought Smoot had entered it, & Laughlin & I went to the land office that night, got there about daylight, & after breakfast met Marvin, & Lampton said he supposed Smoot had entered his land. Marvin said he thought so, but we went to the land office books and found it was not entered, & Lampton entered it—the 80 in controversy. I saw the plat book, that land was vacant; Lampton entered it and got the certificate. We went home, & Lampton
41 & Hammons compared numbers, & the next night we went down with Hammons & he entered all in the section lying west of Lampton in that section.

There was a duplicate — to Lampton for this land. I saw it frequently. When Hammond and I came back Lampton got J. W. Williams, surveyor of *of* Henry Co., to survey his land. When he came he made the survey from this certificate of entry & surveyed this land. I carried the chain. This was only a short time after the entry. He surveyed Lampton's whole tract and did so from the papers. Williams is dead. Lampton built a house that spring & summer. I think his garden run to or near the line of this 80 in duplicate, but not on to it. Lampton used to boast that his land lay in the shape of a book, six 40 S. in each section. He never entered W. ½ N. E. of 33. Lampton claimed his land was a mile one way & ¾ the other; Lampton lived there until he sold to Mansur. He improved 60 or 80 acres of the whole tract. I think he fenced part of this 80 in controversy next his house. Mansur bought him out and moved there. I have not seen that certificate since
42 Williams made the survey. Lampton lived with me while building his house and frequently had his papers out and prided himself and talked about the shape of his land.

Mansur lived there 3 or 4 years; was there when the war begun and *and* lived there during the war. He sold to Swisher. He was a peculiar man. His wife went away during the war. After he left a man was found in the pond at Sedalia; it was supposed it was him. I understood he did not go back to Ohio.

When Lampton went to the land office I think he had gold to make the entry of the 80 acres in controversy. I think Marvin proposed to sell him a land warrant & he bought it, or rather paid Marvin the money & Marvin used the warrant to enter the land with.

I think Lampton signed an application in blank which Marvin said he would fill up.

I cannot be mistaken about this certificate being for this
43 land. I am certain of it. I never heard Lampton say a word about entering the W. ½ of the N. E. of 33. He did not want to go as far east as he had already gone with his entries.

I never heard a word of Lampton's entering that in the N. E. of 33 till I heard it from Sensenderfer.

Means Cross-Examined by Def't.

Cross-examined:

W. ½ N. E. 32 is the land in dispute. I can't say exactly, but think he entered it in May or June, 1856.

Do not remember when he entered it. He did not stay long; say a week or ten days in fall of 1855.

E. ½ N. E. 32 and N. W. ¼ 33 he entered the first of all—all at once in the fall of 1855. As to N. E. S. W. ¼ 33 I don't know just when he entered it. I know about his entering it.

The last piece he entered was the piece in dispute that he thought Smoot had entered. Now I am not sure but he afterwards entered the N. E. S. W. 33, but, if so, it was a short time after. He
44 entered N. W. S. E. 32 in April, '56.

Marvin at first told Lampton he thought Smoot had his land, and then looked and said he had not.

I didn't see the application, except that Lampton signed it.

Marvin said he would fill it up. Lampton signed it and Marvin said he would vouch that the papers would be all right. I didn't read the application; don't know whether it was filled up when Lampton signed it.

Marvin said he would fill it up; never saw it afterwards. I can't be mistaken about certificate or duplicate containing No. 8 W. ½ N. E. 32. If I should see the application now and it should show that Lampton applied for that in sec. 33, I would still say that he entered that in 32.

I know A. C. Clark; do not recollect of being on this W. ½ N. E. ¼ in 33 with him, A. C. Clark.

45 I do not recollect any such thing, nor do I recollect meeting Clark at land office when Lampton and I went there.

Where Swisher's house is is the highest part on the place; land runs off from it every way. It is not quite as high as the disputed 80. Lampton put out an orchard there, but none of it on this in dispute. I think he fenced some of this in dispute in 1857.

This in dispute has been worth, for rental value since, 1872, from $1 to $1.50 per acre. It is worth $2.00 now. I say one dollar, on average, for all that time. I helped to survey W. ½ N. E. 33, in the Government survey. I helped Williams survey 3,000 acres north of this at another time. Williams made his survey of W. ½ N. E. 32 in 1856, very soon after Lampton made this entry. I am sure it was then. I have helped to survey a great deal of land in that neighborhood from time to time.

Do not recollect Lampton saying, he thought of entering W. ½ N. E. 33 because there was water on it. There is, in fact, water
46 on it, but the main water was on the N. W. ¼ of 33, and that Lampton had already entered, and there is none on the W. ½ N. E. ¼ sec. 32.

Manser made no improvements on the land in dispute.

Means Redirect.

Re-examination:

I never helped survey W. ½ N. E. 33, except when I helped the Government survey. If I saw the application and it called for the land in 33 it would not change my opinion. I would still say that Lampton entered that in 32.

M. M. Lampton Ex. by Pl'ff.

M. M. LAMPTON testified:

Live in Sedalia & have 16 years. I moved to this county April, 1856; am 62 years old. I first came here from Ky. in fall of 1855. I met R. D. Means in Georgetown in fall of 1855. I went to his house with Dr. Caldwell and Tevis. I entered 240 acres at Warsaw that fall; Means was with me; do not know that I could describe it. It was in sections 32 & 33 and lay together. It was longest
47 north & south. It was 3 — deep north and south. I afterwards entered a good deal of land there, but do not know how it lay. I entered some south of the other. I came back in April, 1856. Means went with me when I made all my entries. That I entered in the spring was some north and some south of my house. I entered the 80 in controversy in June, 1856. After making my entries, except one 40, this 80 being understood by the neighbors to be left for me, Smoot went to Warsaw and thought he had entered it, & came back and wanted to sell it to me for $5.00 an acre. Means and I went to Warsaw, and Marvin told us on the street he thought Smoot had entered it.

We went to the land office, and he looked and said, Mitch., he has not entered it. We had some talk about a land warrant. I gave him the gold, and he said he would fix it all right. He had been highly recommended to me, and I depended on him to do it right, and I signed a blank application and left it with him to fill up, and he said he would fill it up all right. He gave me a
48 certificate of this very land in dispute. I told Marvin Smoot had entered a 40 I wanted. Marvin said he thought Smoot would take up his entry, as it was not located where he wanted it, and if he did I could have it. The next month I went there and entered the other 40, the last 40 I entered. This put my land in an oblong square ¾ of a mile N. & S. & 1 mile E. & W.

I knew Major Williams, surveyor of Henry Co. This land is near corner of Pettis and Benton and Henry. He made the survey of all my land from my certificate of entry, and he then surveyed this land in dispute and established —.

Means & Nelson were along. The last I knew of Nelson he was at Dry Wood, in S. W. Mo.

Williams fixed corners around my land. I begun to build my house before I entered this 80. It came up in 75 or 100 yds. of my house. I fenced the part of this 80 nearest my house. I lived

there from Aug., 1856, till I sold to Mansur, in 1859 or '60.
49 I took a mortgage for balance of money from him. When war broke out I was living in Windsor. I rented this place for awhile to one Sharp before I sold it. Sharp was living on it when Mansur bought it. I mortgaged this land before to Tutt and Bushnell and others. I paid off this mortgage when he bought. Mansur went into possession. I was there once and got his gun and took it South with me.

After the war I was there and saw Mansur in possession. Mansur & Swisher came to Sedalia, bought and turned over this certificate of entry to Mansur when I sold to him. Steele drew the mortgage and the deed from me to Mansur, and did so from the certificates of entry.

When Mansur sold to Swisher they paid me, and I satisfied the mortgage. I never heard of Mansur since. I do not recollect the year, but Sensenderfer came to me, and we got into a conversation about this, and I told him if it was any other 80 in the tract I might think he had some chance, but I was most particular
50 *for* about this, for I got it to square my land and it was near my garden. I never got a patent for this land; I got no patent to any of my land I entered. I paid the taxes on this land until I sold it.

Cross-Examined.

LAMPTON cross-examined by deft:

When I saw Sensenderfer I did not tell him it seemed almost impossible I should have made that mistake, it must have been a mistake on my part, nor anything of that kind. I saw Major Marvin frequently from fall, 1855, till spring, 1856. My recollection is the paper I signed at Warsaw was a printed blank. I think it was the land warrant. I know there was some conversation about Montgomery writing to the Land Office. I frequently conversed with Sensenderfer.

After the correspondence of Montgomery with the General Land Office I did not tell him I had been mistaken or that I had made a mistake, for it was not my mistake.

After this trouble got up I made a quitclaim deed to W.
51 ½ N. E., sec. 33, because Swisher agreed if I would do so he would not hold me or my warranty to Mansur for this land. I know I wanted to enter this 80 in dispute. I would not have had that in 33.

Sensenderfer told me my 80 was in sec. 33, and that he got it from the Land Office at Washington or Boonville; not sure which.

Lampton Redirect.

Re-examined:

I never claimed the — land in sec. 33—that is, the W. ½ N. E. 33. I never entered it. I never intended to enter it. What I meant to say I signed at the Warsaw land office was the application,

not the warrant. I do not recollect of anybody being present when I signed the application but Means; don't know N. B. Holden; do not recollect him at all. He might have been there. I didn't authorize Marvin to fill the application with anything. I signed the blank. Marvin said he would fill it up and fix it all right.

52 *O'Gary Ex. by Pl'ff.*

THOMAS O'GARY testified:

I live in Benton county—have 11 years—14 miles from Windsor. I lived in Windsor from 1870 to 1872; was keeping hotel. I met Sensenderfer there in 1871 or '2. I took him out to Major Neil's, in Johnson Co. When I got there defendant said he had a deed to part of Neil's land. Neil said he guessed not. Defendant said, Let us compare title papers. They looked over their papers and found some mistakes. On my way back I asked him what his business was with lands. He said his business was hunting up tracts of land that there had been mistakes in the entry of, and to enter it. I asked him if he found a piece of a poor man's land with a mistake in it if he would take it from him. He said in that case he would let him have it cheap, but if it was a rich man he made him pay well for it. I asked him why he did not enter wild land and make no trouble. He said he would not pay tax on it for it;
53 that he wanted well-improved lands belonging to rich men.

When he went away he asked me about getting a room at my hotel; said he wanted to spend most of the summer; that he was going to Boonville to hunt up more mistakes in entries, and then would come back and look at the land and see if it was worth entering; that he would be back in about two weeks, but never came.

I testified to this 2 years ago at Warrensburg, and again a year ago here.

O'Gary Cross-Ex. by Defendant.

Cross-examined:

The land of Major Neil's that defendant has entered I do no know whether it was improved or not. I think I understood from Neil part of it was in his field. I testified at Warrensburg, in the case of Sensenderfer against Dunkley, about two years ago. I did not testify in the Neil case, nor in the Smith case. My trip to Neil's with def't was in 1871 or '2.

Col. Phillips found out what I knew about it in taking my deposition in the Swisher case, and while it was in the U. S. circuit court.

54 *Deposition of Gustav Reiche.*

Deposition of GUSTAV REICHE read by plaintiff as follows:

My name is Gustave Reiche; my residence is in the city of Boonville. I am register of the United States land office in the city of Boonville, Mo. I have held this office since the first day of July,

1874. (Book shown witness and identified by him as tract book, Warsaw district, township 47, from range 21 to range 33, and township 48, from range 21 to range 26.) This book purports to be a copy of the tract book of entries made at the Warsaw land office and certified to Washington, and a certified copy sent from the General Land Office at Washington to this—that is, it is a certified copy from the General Land Office at Washington, D. C., of the entries made in the Warsaw, Mo., dist. From the records on file in this office I find that the books of entry at Warsaw were burned. This information is conveyed by letter from the General Land Office at Washington, dated February 12th, 1863, a copy of which is herewith filed, marked Exhibit "A."

55 On page 5 of this book above *above* referred to I find the following entry of record, to wit:

Under the entries in section 14, township 47, range 21, there appears the following entry: "S. E. ¼ of S. E. ¼, sec. 25." This entry appears in red ink on page 9 of this book. Under the head of section 25, township 47, range 21, appears the following entry in red ink: "S. E. ¼ of S. E ½ 14, N. E. ¼ of N. E. ½ 23, & W ½ of N. W. ¼." Under the head of acres: 160. Opposite this the following appears in red ink: "Located by Wm. R. Kemp, assignee of Thomas W. Hendley, June 13, 1848, with M. B. L. W. 1384, act 11 Feb'y, 1847;" a copy of which entry is herewith filed, marked Exhibit "B."

On the same page, 9, of said book there appears the following other entry under the head of section 25, township 47, range 21: E. ½ of S. W. ¼ & N. ½ S. W. ¼, and opposite this, under head acres: "160," and opposite: "Located by Wm. R. Kemp, assignee of David S. Crow, June 13, 1848, with M. B. L. W. No. 6227, act 11 Feb'y, 1847;" a copy of which entry is herewith filed, marked Exhibit "C."

Question by def't's attorney: Look at said book of entries and state what the same shows with regard to the west half
56 of the N. W. ¼ of sec. 25, township 47, range 21.

Answer. On page 9 of said book, right under the entry first above quoted on page 9, the following entry appears: The southw. ¼ of N. W. ¼ sec. 25, township 47, range 21, is purported to be entered by Simeon Payne Nov. 29th, 1853; No. of certificate of purchase, 36617; and under this last entry and on the same page appears the following other entry: The N. W. ¼ of N. W. ¼ sec. 25, township 47, range 21, by Berry L. Greer, Jan'y 16, 1854; No. of entry, 37026. These last entries of Payne & Greer are made in black ink; copies of which entries are herewith filed and marked Exhibit "D." The letters "M. B. L. W." as they appear on said book means "military bounty land warrants," and the words act 11 Feb'y, 1847, refer to the act of Congress under which the land warrants were issued.

Cross-examin*ed* by plaintiff's attorney waived.

GUSTAVE REICHE.

Which said Exhibit "A" referred to in deposition of said Gustave Reiche is in words and figures following:

57 EXHIBIT "A."

GENERAL LAND OFFICE, *February* 12*th*, 1863.

GENTLEMEN: In accordance with the provisions of law, the President of the United States has directed the discontinuance of the land office at Calhoun, Mo., and that the unsold lands in the district be attached to the Boonville district, where they will be made subject to sale & location hereafter. It having heretofore been reported to the office that the whole contents of the register and receiver's offices at Calhoun were burned some months since by the rebels, there of course remains nothing to deliver to you.

This office is now opening a new set of tract books, in which are pasted the lands heretofore disposed of in the "western district," either at Warsaw or the other sites of the offices for the district. These books will be shortly transmitted, and upon their receipt you will issue a notice once a week for six weeks in two papers having the largest circulation in your own and the discontinued district, specifying the day on which you will be prepared to receive
58 applications for the entry of lands in the old "western district."

So far as applicable, the general investigations contained in letter to you of July 15, 1861, respecting the discontinuance of the St. Louis district, will be applied to the present case, particularly as regards the numbering of applications, entries, &c., and you are therefore referred to those instructions. Enclosed is a copy of the public notice, No. 688, of the discontinuance of the Calhoun or "western district," which you will cause to be published as above directed and for a like period of time, not, however, awaiting the receipt of the tract books, but give immediate publicity thereto; printed copies of the notice will be sent you for distribution.

The receiver as dist. agent is authorized to defray the expenses of these publications, referring on his voucher to the date of this letter.

You are requested to acknowledge the re'ipt hereof.

Very respectfully, J. M. EDMUNDS, *Comm.*

Register & receiver.

59 U. S. LAND OFFICE,
BOONVILLE, MO., *Aug. the* 30, 1875.

I, Gustave Reiche, register of said office, hereby certify the foregoing to be a true, full, and correct copy of the original thereof as the same now appears and remains on file of official letters of this office.

In testimony whereof I have hereunto set my hand (this office having no seal), at office, in Boonville, Mo., the day and year last above written.

GUSTAVE REICHE, *Register.*

Deposition of Geo. Riche.

Deposition of GEORGE REICHE read by plaintiff as follows:

I am twenty-seven years of age; reside in Boonville, Mo., and am receiver of the public moneys at the United States land office at Boonville, Mo; have been receiver since the first day of March, 1874. I have never seen the original records of the Warsaw
60 office in this office, and this office embraces the district of lands embraced in the Warsaw office.

That district was formerly known as the Calhoun or western district of Missouri. I am not acquainted with the plaintiff.

GEORGE REICHE,
Rec'r U. S. L. O.

Gustave Reiche Recalled.

GUSTAVE REICHE recalled by the plaintiff's attorney:

The letter dated Nov. 15, 1872, a copy of which is hereto attached and marked Exhibit "E," appears on file among the official letters in this office. (The original letter here shown the witness, and — identified it as the letter received from the Commissioner of the Land Office at Washington, D. C.)

Re-examined by the defendant in the case of Sinsenderfer against Samuel Swisher:

The book shown witness as containing entries made at the land office at Warsaw in sections 32 and 33, township 44, range 23.
61 It is admitted by the cou-sel for the plaintiff and defendants that this book is a record of the land office at Boonville, Mo. On page 11 of said book appears the following entries of record, to wit:

E. ½ of N. E. ¼ 32, 44, 23. See sec. 33.

W. ½ N. E. ¼ 32, 44, 23, 80, 125, 100, Wm. Sensenderfer, 24 Sept., 1870. 41354.

E. ½ of N. E. ¼ 33, 44, 23, 80.00, located by Benjamin W. Brice, 1699, Nov. 21. 1856, per M. L. w't No. 40872, *October* 1855.

W. ½ of N. E. ¼ 33, 44, 23, 80.00, located by Mitchel M. Lampton, 441, June 17, 1856, per M. L. W. No. 26384, oct 1855.

W. ½ N. E. ¼ 33, 44, 23, 80.00, located by Benjamin W. Brice, 1700, Nov. 21, 1856, per M. L. W. No. 201, oct 1855.

E. ½ of N. E. ¼ 32 & N. W. ¼ 33, 44, 23, 240, 76, 180.00, Mitchell M. Lampton, Nov. 16, 1855, 46047.

N. E. ¼ of S. W. ¼ 33, 44, 23, 40.00, 125, 500, Mitchell M. Lampton, July 5, 1856, 48860.

N. E. ¼ S. E. ¼ 32 & N. W. ¼ of S. W. ¼ 33, 44, 23, 80.00, 75, 60.00, Mitchell M. Lampton, April 26, 1856, 47993; a copy of which said entries is herewith filed, marked "Exhibit F."

GUSTAVE REICHE.

* * * * * * *

62 Which said Exhibits "E" and "F" are in words and figures following:

EXHIBIT "E."

Copy.

C. DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *Nov.* 15, 1872.

Register & receiver, Boonville, Mo.

GENTLEMEN: Your attention is called to the following locations with military warrant act of 1855, which are found to be in conflict after a careful examination and comparison of the records with the papers on file, viz:

Warsaw R. & R., No. 441, June 17, 1856, in the name of M. M. Lampton, warrant 26387, W. ½ of N. E. ¼ sec. 33, 44 N., 23 W., patented April 1st, 1859, and Warsaw R. & R., No. 1700, Nov. 21, 1856, in the name of Benjamin W. Brice, warrant 201, 160 acres, W. ½ N. E. ¼, said section 33.

Mr. Brice's location is therefore invalid because of the prior 63–65 location of said tract by Mr. Lampton, but it appears was inadvertantly allowed and patented November 10th, 1859, and the patent sent to the Hon. Owen Lovejoy May 17, 1860. You will inform Mr. Brice of the foregoing facts, and that upon a duly executed relinquishment of his patent to the U. S. an application through your office — in the usual form. The warrant may be returned with a certificate attached authorizing its relocation.

Very respectfully, W. W. CURTIS,
Acting Commissioner.

U. S. LAND OFFICE,
BOONVILLE, MO., *August the 30th*, 1875.

I, Gustave Reiche, register of said ?, hereby certify the foregoing to be a true and correct copy of the original thereof as it appears and remains on the official letter files of said office.

Witness my hand (this office having no official seal), at office, in Boonville, Mo., the day and year last above written.

GUSTAVE REICHE, *Register.*

* * * * * * *

No. 23 W., district of ——, township 41 N., range — —.

Date of sale.	No. of receipt and certificate of purchase.	To whom patented.	Date of patent.	Where recorded. Vol.	Where recorded. Page.	Description of the tracts. Parts of section.	Section.	Township.	Range.	Contents.	Rate per acre.	Purchase-money.	Name of the purchaser.
										Acres. 100th-.	$ *c.*	$ *c.*	
27th Sept., 1870	41354					E. ½ of N. E. ¼	32	44	23	See	sec. 33.		
						W. ½ of N. E. ¼	"	"	"	80	1 25	100	Wm. Sensenderfer.
						N. W. ¼ of S. E. ¼	"	"	"	40	1 25	50	Mitchell M. Lampton.
April 26, 1856	47993					N. E. ¼ of S. E. ¼	See	sec.	33.				
1699, Nov. 21, 1856,	per M. L.	w't	No.	10872, act	1855	E. ½ of N. E. ¼	33	44	23	80.00	Located by		Benjamin W. Brice.
441, June 17, 1856,	per M. L.	w't	No.	26584, act	1855	W. ½ of N. E. ¼	"	"	"	80.00	Located by		Mitchell M. Lampton.
1700, Nov. 21, 1856,	per M. L.	w't	No.	201, act	1855	W. ½ of N. E. ¼	"	"	"	80.00	Located by		Benjamin W. Brice.
Nov. 16, 1855	46047					E. ½ of N. E. ¼,	32,	& N. W. ¼		240.00	75	180 00	Mitchell M. Lampton.
July 5, 1856	48860					N. E. ¼ of S. W. ¼	"	"	"	40.00	1 25	50 00	Mitchell M. Lampton.
April 26, 1856	47993					N. E. ¼ S. E. ¼,	32,	& N. W. ¼ of S. W. ¼		80.00	75	60 00	Mitchell M. Lampton.

U. S. LAND OFFICE, BOONVILLE, MO., *August 31st*, 1875.

I, Gustave Reiche, the undersigned, register of said office, hereby certify that the foregoing entries and locations *to be* a true, full, and correct transcript from the official tract book of this office as they appear of record.

In testimony whereof I have hereunto set my hand (this office having no seal), at office, in Boonville, Mo., the day and year last above written.

GUSTAVE REICHE, *Register*.

68 Also *description* of Jno. N. Gott, as follows:

Jno. N. Gott's Deposition.

I am forty-one years of age and reside in Boonville, Mo. I am now book-keeper in the Central National Bank of Boonville, Mo. I held the office of receiver of public moneys in the land office from February, 1870, to first of February, 1874. I was a clerk in the office for one year prior to the commencement of my office as receiver. (The books of record mentioned in the deposition of Gustave Reiche shown witness, and were identified by him as the same books that were in the office when he was clerk and receiver therein. They are called tract books. These were the only tract books used in this office, pertaining to *to* the land mentioned in them.)

I am acquainted with the plaintiff in this suit; have known him since the spring of 1870. I first became acquainted with him at this place in the United States land office. He remained here the greater portion of the following two years. He had no posit-on in the land office at that time. He was at the land office dur-
69 ing the time he stopped here nearly every day. He appeared to be making examination of the records with a view of entering and locating lands.

There did not appear to be any one assisting him in his examination of the records. His examination- of the records were confined to the tract books above referred to. During a greater portion — 1870 William —— was register of lands in the land office at this place.

The method pursued by Mr. Sensendorfer in making examinations of the records in this office during the time he was here was to check off in pencil in plats the lands that had been entered as appeared by the tract book.

The vacant description- on the plats were supposed to show the public lands, and from these he made his entries.

The rule with regard to entries made under military land warrants in the office was to make them in red ink on the tract books in this office, giving a description, the area, name of locator or assignee, and date of location, number of warrant, the act under which the warrant was issued. There was, in addition to the tract books, a book or register know as the Register of "Warrant Loca-
70 tions." All warrant locations were pasted into this book.

The entries in the tract books, as certified from Washington, were not always found to be correct.

Mr. Sensenderfer during his stay here became acquainted with the fact that there were errors in said books. It was a matter of conversation in the office.

This office does not contain all the records kept at the Warsaw office.

This tract book purports to be a copy of the books in the General Land Office, at Washington city, as made up there from the Warsaw office. Mr. Sensenderfer made a number of entries of land in different counties, made some in Pettis, some in Henry, some in Cass, and some in Johnson, and some north of the river.

I remember of hearing Mr. Sensendorfer say that after he made the entries that he went and found them occupied and claimed by other parties. I understood from Mr. Sensenderfer that he came here from Saint Louis; that he had been living in St. Louis for a good many years. I heard him say that he lived before he went to St. Louis at Quincy, Ill. He also stated that he had been in
71 Colorado; that he had some agricultural and mining lands there. I also heard him say that he was in the habit of corresponding with an att'y or att'ys at Washington, D. C., with regard to the entries that he had made after he found that there was an advance claim to the land. In some instances he expressed a doubt about the land being subject to entry.

Cross-examined by the plaintiff:

These tract books were copies from the original tract books at Washington, D. C. The tract books that were destroyed at Warsaw were made from pasting the applications made at that office into the tract books. The tract books at Washington and from which the book in this office was copied was made up from the reports from the office at Warsaw and the original applications forwarded from the Warsaw office. The tract books in this contain all the entries made in this district. This district as it is now constituted, contains fully three-fourths of the territory of this State.

Question by pl'ff's att'y:

Can a stranger tell by reference to these books what lands
72 have been entered?

Ans. Yes, if he can read and write.

Question by pl'ff's att'y:

Did Mr. Sensenderfer pursue the usual method of those desiring to locate land at this office in his examination of the books at this office?

Ans. Yes.

(The above questions and answers were objected to by defendant's att'y.)

Question by plaintiff's attorney:

Are these books open to the examination of all persons desiring to locate land?

Answer. Yes sir. The instructions of the department are to keep them in an accessible place and open to the inspection of those desiring to look at them.

Question by plaintiff's att'y:

Are not all the lands not shown to have been entered by this book open to entry?

Answer. Yes sir. And the officers are instructed to regard such as undisposed of and subject to entry.

Question & answer objected to by defendant's att'y.

Question by pl ff's att'y:

Was not your testimony in your direct examination in
73 answer to questions propounded to you by def't's attorney.
Ans. Yes, sir; so I regarded it.

Re-examination by defendant's attorney:

It was generally considered that at the time the plaintiff was here that all the lands in Pettis and Johnson counties were entered prior to that time; but on close examination it was found that there were some vacant tracts in these counties.

JNO. N. GOTT.

Pl'ff offered and read in evidence the patent to B. W. Brice for W. ½, N. E. 33, 44, 23, as follows:

Brice Patent.

UNITED STATES OF AMERICA:

To all to whom these presents shall come, Greeting:

Whereas in pursuance to the act of Congress, approved March 3, 1855, entitled "An act in addition to certain acts granting bounty land to certain officers and soldiers who have been engaged in the military service of the United States, there has been deposited
74 in the General Land Office warrant No. 201, for 60 acres, in favor of Susan Barrett, widow of Soloman Barrett, Mexican — revolutionary war, with evidence that the same has been duly locacated upon the west half of the northeast quarter of section thirty-three, in township fourty-four of range twenty-three, in the district of lands subject to sale at Warsaw, Missouri, containing eighty acres according to the official plat of the survey of the said land returned to the General Land Office by the surveyor general, the said warrant having been assigned by the said Susan Barrett to Benjamin W. Brice in whose favor said tract has been located.

Now, know ye, that there is therefore granted by the United States unto the said Benjamin W. Brice, as asssignee as aforesaid and to his heirs and assigns forever.

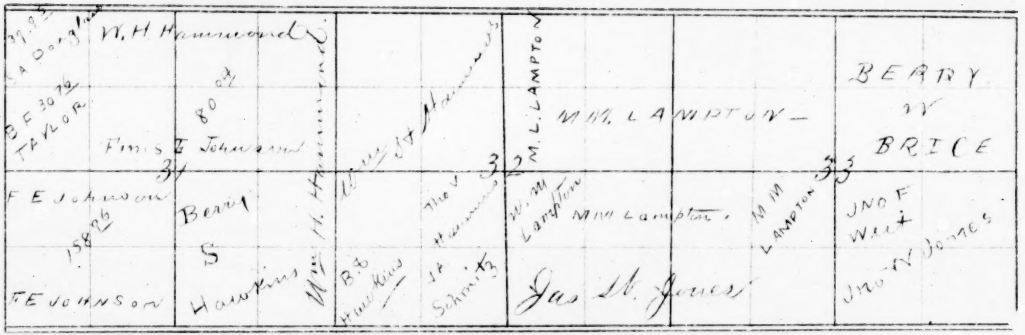
In testimony whereof I, James Buchanan, President of the United States of America, have caused their letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand at the city of Washington, the tenth
75 day of November, in the year of our Lord one thousand eight hundred and fifty-nine, and of the Independence of the United States the eighty-fourth.

By the President:

JAMES BUCHANAN,
By H. B. LEONARD, *Sec'y.*
"E." J. M. GRAY,
Recorder of the General Land Office.

Copy of Platt in Recorders Office
No 281 - Folio 77.



Defendant objected because irrelevant, and because before the entry of said Brice said land had been entered by M. M. Lampton, and before said patent was issued the same had been patented to said Lampton, as will appear hereafter in this bill of exceptions.

The court overruled the objections, and defendant excepted at the time.

Plaintiff offers in evidence the plat of lands purporting to have been entered at the Government district land office at Warsaw, Missouri, prior to 1858, with the following certificate:

Certificate of M. L. Means, Register.

I, Mark L. Means, register of the land office at Warsaw, Missouri, do certify that this and accompanying township plats embrace all the territory in Pettis county, Missouri, with the names of the original purchasers endorsed on each tract purchased at said
76 land office, as appears by the original plat books and records in said office, and that said plats are correctly transcribed with the endorsements thereon.

Given under my hand this 1st day of July, 1858.

M. L. MEANS, *Register.*

Admission of Def't as to County Plat.

It is admitted by defendant that said certificate was written by Mark L. Means, the register of said land office, and that said map since 1858 has been kept in the proper clerk's office of this county until the creation of the office of recorder in this county after the war, where it has since been kept; that the same under an order of the county court of this county has since been duly transcribed with a plat book kept in said recorder's office, and has since it was received in this county, in 1858, been used and referred to as evidence of the source of title to Government lands in said county.

It is further admitted that the land office at Warsaw, with
77 its records and contents, was destroyed by fire in 1862.

The defendant objected to the admission of said plat in evidence for the following reasons: Because not certified as required, and especially because it is not certified to be and does not purport o be a copy of any record, memoranda, or paper in any U. S. land office, and to the plat, because not as required by the law — which it was procurred, in that the number of acres and number of survey is not given.

Which objection the court overruled and the defendant excepted; thereupon the plaintiff put — evidence said certificate of Mark L. Means, register, and sections 31, 32, and 33 of township 44, range 23, with endorsements thereon, which are as follows:

(Here follows diagram of plat.)

Plaintiff then put in evidence the following mortgages and deeds, duly executed, acknowledged, and recorded, conveying the lands in controvesy, to wit:

78 *Mortgage of Lampton to Caldwell*

M. M. Lampton
to
Joseph H. Caldwell. } Consideration $1,000.00.

Mortgage dated Jan'y 13th, 1858, recorded in recorder's office of Pettis county Jan'y 20th, 1858, Book H, pg. 448.

Deed of Lampton to Allen, Trustee.

M. M. Lampton and Wife
to
Robert Allen, Trustee for J. H. Bushnell and J. A. Tutt. }

Deed of trust dated Dec. 28th, 1858, recorded in recorder's office aforesaid Jan'y 3d, 1859, in Book "I," pg. 148. Consideration $572.63.

Lampton to Mansur.

M. M. Lampton & W'fe
to
Geo. Mansur. }

Warranty deed dated Oct. 11th, 1860, and recorded in office aforesaid Oct. 13th, 1860, Book "J," pg. 24. Consideration $3,750.00.

Mortgage to Lampton from Mansur.

George Mansur
to
M. M. Lampton. }

79 Mortgage deed dated Oct. 11th, 1860, and recorded in the office aforesaid Oct. 13th, 1860, Book J, pg. 25. Consideration $1,500.00.

Deed — Mansur to Swisher.

George Mansur & W'fe
to
Sam'l Swisher. }

Warranty deed dated October 11th, 1865, and recorded in the office aforesaid Jan'y 27th, 1866, in Book L, pg. 359; con. $3,750.00.

To all of which defendants objected because irrelevant and because they are deeds not in the claim of title under which defendant holds, and are not any deeds which, being recorded, imparted notice to defendant. The court admitted the whole of them; to which defendant excepted at the time.

Pl'ff read in evidence certified copy from office register of lands of Mo. as follows:

Copy from Register of Missouri.

By whom entered.	Acres.	100th.		Part of section.	Section.	Township.	Range.
* *	*	*	*	* *	*	*	*
* *	*	*	*	* *	*	*	*
M. M. Lampton----	80	----	----	W. ½ of N. E. ¼	32	44	23
* *	*	*	*	* *	*	*	*
* *	*	*	*	* *	*	*	*

80 LAND OFFICE, WARSAW, MO., *Dec.* —, 1856.

I hereby certify that the attached two hundred and thirty-eight pages contains a true abstract of the lands sold for cash and located with warrants at this office between the 1st day of November, 1855, and the 15th day of Nov., 1856, both days inclusive.

A. C. MARVIN, *Register.*

STATE OF MISSOURI, OFFICE REGISTER OF LANDS.

I, Robert McCulloch, register of lands for the State of Missouri, certify the foregoing entry of the W. ½ of N. E. ¼ of sec. 32, township 44 north, range 23 west, to be correctly copied from a report by A. C. Marvin, register of the United States land office at Warsaw, Mo., of lands sold at said office from Nov. 1st, 1855, to the 15th day of Nov., 1856, together with the certificate of A. C. Marvin, register aforesaid, appended to said report, as the same is recorded in Book No. 12 of Record of Sales of United States lands, now on file in this office.

In testimony whereof I have hereunto set my hand and [SEAL.] affixed the seal of said land office, at the city of Jefferson, this 30th day of April, 1881.

ROB'T McCOLLOCH,
Register of Lands.

81 To which d'f't objected as incompetent and irrelevant and a matter that cannot go to destroy the title of defendant conveyed to him by his patent.

Also a like copy from same office showing entry by B. W. Brice, as follows:

Certified Copy from Register of Lands, Mo.

List of lands sold at the land office at Warsaw, Missouri, from the 16th day of November, 1856, to the 15th day of November, 1857, inclusive.

By whom entered.	Acres.	100ths.	Part of section.	Section.	Town.	Range.
* *	*	*	* *	*	*	*
* *	*	*	* *	*	*	*
B. W. Brice ----------	80	00	W. ½ of N. E. ¼ ----	33	44	23
* *	*	*	* *	*	*	*
* *	*	*	* *	*	*	*

LAND OFFICE, WARSAW, MO., *Nov. 15th*, 1857.

I, M. L. Means, register of land office at Warsaw, Mo., certify that the foregoing is a true list of lands sold at this office from the 15th day of November, 1856, to the 15th day of November, 1857, inclusive.

M. L. MEANS, *Register.*

82 STATE OF MISSOURI,
OFFICE OF REGISTER OF LANDS.

I, James E. McHenry, register of lands for the State of Missouri, hereby certify that the foregoing entry of the W. ½ of the N. E. ¼ of sec. 33, t'p 44, range 23, together with the certificate thereto attached, is correctly copied from a report by M. L. Means, register of the United States land office at Warsaw, Mo., of lands sold at said office from the 15th day of November, 1856, to the 15th day of November, 1857, inclusive, as the same is recorded in Book No. 14, records of the sales of United States lands, now on file in this office.

In testimony whereof I have hereunto set my hand and
[SEAL.] affixed the seal of said office, at the city of Jefferson, this 18th day of May, 1880.

JAS. E. McHENRY,
Register of Lands.

To which defendant objected for the same reason and because the said land was not subject to entry at the time of said Brice entry, as hereinafter shown.

Tax Books Admitted in Evidence.

83 Tax book of 1857, W. ½ N. E. 32 assessed to Lampton from '57 to '60; no tax back in office; 1860, '1, '2, '3 assessed to

George Mansur; in 1864 no assessment; same in 1865; books for 1866 can't be found; in 1867 to Lampton; 1868 M. L. Lampton; from 1869 down assessed to Swisher. Books show that these taxes were paid.

Swisher Recalled.

SWISHER, recalled, says:

I paid 4 years' back taxes when I bought. The reasonable rental value during the time since defendant entered it was $1.00 to $1.50 an acre per year.

It is all in cultivation. The W. ½ N. E. is in possession of D. S. Foreman and has been since 1867 or '8. He took it under the Brace(?) heirs.

H. C. Sinnett.

H. C. SINNETT testifies:

B. W. Bruce, who claimed W. ½ N. E. 33, lived in Newark, O. I knew him. He died in 1859 or '60 to '62. This land went to his heirs with a large amount of land he had entered in this county.

84 Mrs. Kibler, a daughter of Brice, got this piece. I had to do with the business for the Brice heirs, and got the patent and gave it to pl'ff's attorney for me in this case. Mrs. Kibler sold this to Foreman and he took possession of it in 1868.

Will of F. W. Brice.

Pl'ff put in evidence the will of B. W. Brice, dated in Ohio, 19th August, 1858, witnessed the same day, and again Jan. 24th, 1861; probated in Ohio 8th May, 1867; recorded in Book N, Deed Records of Pettis Co., Mo., 24th May, '67.

Also put in evidence deed from the ex'rs and heirs of Brice, of date Aug., 1867, conveying the W. ½ N. E. ¼ sec. 33, T. 44, R. 23, to one Mary Kibler, who was a daughter of Brice; also puts in evidence chain of title from Mrs. Kibler down to D. S. Foreman; to all of which defendant objected for the reason before stated as to said Brice entry and for the same reason as before stated as to said deed from Lampton to Mansur and those in that chain of title. The court overruled said objections, to which defendant excepted at the time.

R. D. Means Recalled.

R. D. MEANS, recalled, testified:

85 In 1869–'70 there were no vacant lands unentered in that part of this county.

I kept a plat of that township till all the land was entered, and marked as it was entered.

Cross-examined:

I know the land was all entered before the land office was burned at Warsaw from examination & from what the officers told me.

Plaintiff closed.

Defendant offered and read the patent to himself, as follows:

Sensenderfer Patent.

The United States of America to all to whom these presents shall come, Greeting:

Certificate No. 41354. Examined.

Whereas William Sensenderfer, of St. Louis Co., Mo., has deposited in the General Land Office of the United States a certifi-
86 cate of the register of the land office at Boonville, Mo., whereby it appears that full payment has been made by the said William Sensenderfer according to the provisions of the act of Congress of the 24th of April, 1820, entitled "An act making further provisions for the sale of the public lands," for the west half of the northeast quarter of section thirty-two, in township forty-four, of range twenty-three, in the district of lands subject to sale at Boonville, Mo., containing eighty acres, according to the official plat of the survey of the said lands returned to the said General Land Office by the surveyor general, which said tract has been purchased by the said William Sensenderfer:

Now, know ye that the United States of America, in consideration of the premises and in conformity with the several acts of Congress in such case made and provided, have given and granted, and by these presents do give and grant, unto the said William Sensenderfer and to his heirs the said tract above described; to have and to hold the same, together with all the rights, privileges, immunities, and appurtenances of whatsoever nature thereunto belonging, unto the said William Sensenderfer and to his heirs and
87 *and* assigns forever.

In testimony whereof I, Ulysses S. Grant, President of the United States of America, have caused these letters to be made patent and the seal of the General Land Office to be hereunto affixed.

Given under my hand, at the city of Washington, the
[SEAL.] tenth day of January, in the year of our Lord one thousand eight hundred and seventy-one, and of the Independence of the United States the ninety-fifth.

By the President:

U. S. GRANT,
By J. PARRISH, *Sec'y.*
JN. GRANGER,
Recorder of the General Land Office.

Recorded, vol. 80, page 237.

STATE OF MISSOURI, } ss:
County of Pettis, }

I, J. D. Crawford, recorder of deeds within and for the county and State aforesaid, do hereby certify that the above and foregoing instrument of writing was filed for record in my office on the 14th day of September, A. D. 1871, at 8 o'clock 10 min. a. m., and has
88 been duly recorded in Deed Record "T," on page 227.

[SEAL.] Witness my hand and official seal, at office, in Sedalia, Pettis county, Missouri, the day and year aforesaid.

J. D. CRAWFORD, *Recorder,*
By CHAS. ROLL, *D. R.*

Def't offered and read certified copy of patent to Lampton for W. ½ N. E. 33 as follows:

Certified Copy of Lampton Patent.

"United States of America" to all — whom these presents shall come, Greeting:

Whereas, in pursuance of the act of Congress approved March 3, 1855, entitled "An act granting bounty land to certain officers and soldiers who have been engaged in the military service of the United States," there has been deposited in the General Land Office warrant No. 26384, for 80 acres, in favor of Leah Gordon, widow of William Gordon, private Captain Hargoe's company, Indiana militia, war 1812, with evidence that the same has been duly
89 located upon the W. ½ of the northeast quarter of section thirty-three, in township forty-four, of range twenty-three, in the district of lands subject to sale at Warsaw, Missouri, containing eighty acres, according to the official plat of the survey of the said lands returned to the General Land Office by the surveyor general, the said warrant having been assigned by the said Leah Gordon to Mitchel M. Lampton, in whose favor said tract has been located:

Now, know ye that there is therefore granted by the United States unto the said Mitchel M. Lampton, as assignee as aforesaid, and to his heirs and assigns forever, the tract of land above described; to have and to hold the said land, with the appurtenances thereof, unto the said Mitchell M. Lampton, as assignee as aforesaid, and to his heirs and assigns forever.

[SEAL.] In testimony whereof I, James Buchanan, President of the United States of America, have caused these letters to be made patent and the seal of the General Land Office to be hereunto affixed.

Given under my hand, at the city of Washington, the
90 first day of April, in the year of our Lord one thousand eight hundred and fifty-nine, and of the Independence of the United States the eighty-third.

By the President:

JAMES BUCHANAN.
B. T. J. ALBRIGHT, *Secretary.*
J. N. GRANGER,
Recorder of General Land Office.

Recorded, vol. 265, page 411.

16340
B.

H. H. W.
S. W. C.

DEPARTMENT OF INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *June 19th*, 1880.

I, J. A. Williamson, Commissioner of the General Land Office, do hereby certify that the annexed copy of patent in favor of Mitchel W. Lampton, founded on warrant No. 26384, for 80 acres, act of 1858, is a true and litteral exemplification from the records of this office.

In testimony whereof I have hereunto subscribed my
[SEAL.] name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

J. A. WILLIAMSON,
Commissioner of General Land Office.

91 Defendant offerred and read certified copy of letter of Commissioner of General Land Office to register of land office at Plattsburg, Mo., as follows:

Certified Copy of — Com'r to Register at Plattsburg,

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *May* 22, 1855.

Register, Plattsburg, Mo.

SIR: As my letter to yourself and the receiver of the 28th of February last, respecting the operations of your office, may not be deemed sufficiently explicit in reference to some of the points presented in your letter of the 30th Nov., 1854, & 27th of Feb'y, 1855, respectively, I would further state that the authority conferred upon you by law to administer oaths cannot be delegated by you to your "sworn clerk" or to any other person, but rests solely with you as register, and the affidavits referred to which were made before your clerk during your absence and the sickness of the receiver in November last are null and void, but it will be necessary, as sug-
92 gested by you, to procure in each case a proper affidavit in the form required by the circular of the 30th of October, 1854, and May 1st, 1855, to be filed with the certificate of purchase in this office. Upon re-examining your letter of the 27th February last I am led to believe from your statement that you have not only been in the habit of filling up the affidavits of parties applying to enter land under the graduation act, but also of signing their names to the same.

If this be true it is a matter of surprise how you could have fallen into so great an error. I should have supposed that the impropriety of such a course would have at once struck your mind, and that such an affidavit could have no binding force upon the person who made it.

The affidavit in every instance must be subscribed by the affiant himself, and in every case where this has not been done you will require a proper legal affidavit to be made to substitute for the illegal one.

You also appear to be laboring under a misapprehension in sup-osing the application of a purchaser to be a mere matter of form. Such is not the fact.

By the act of Congress approved February 24th, 1810, every
93 person making application at any of the land offices of the United States for the purchase at private sale of a tract of land is required to produce to the register a memorandum in writing describing the tract which he shall enter by the proper numbers of the section, half section, or quarter section (as the case may be) and of the township and range, subscribing his name thereto, which memorandum the register shall file and preserve in his office.

Such written application forms the foundation of every entry, and is made to govern in all cases in deciding the question as to what particular tract of land was entered and under what circumstances it is admissable to alter in any manner the affidavit and application of the purchaser. The filling up of the application is no part of the duty of the receiver or register.

If requested to do so, you may fill up the application; but when signed by the applicant it becomes his own act, and he alone is responsible for any errors that may exist therein.

The affidavit of Mr. Miller, which accompanied your letter of the 27th February ult., as it agrees with his application, has been
94 filed with the appropriate certificate of purchase, but you will in future avoid making a similar error.

Very respectfully your ob't serv't,

JOS. S. WILSON,
Acting Commissioner.

C. DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *December* 31, 1880.

I, J. A. Williamson, Commissioner of the General Land Office, do certify that the annexed copy of a letter from this office to the register of the district land office at Plattsburg, Mo., dated May 22d, 1855, is a true and literal exemplification of the original as of record in this office.

In testimony whereof I have hereunto subscribed my
[SEAL.] name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

J. A. WILLIAMSON,
Commissioner General Land Office.

To which plaintiff objected.

* * * * * * *

95 D'f't offered and read certified copy of letter from Commissioner of General Land Office to Jno. Montgomery, Jr., as follows:

Certified Copy of Letters from Com'r to Jno. Montgomery.

DEPARTMENT OF THE INTERIOR,
WASHINGTON, D. C., *Nov.* 15, 1872.

Mr. John Montgomery, Jr., Sedalia, Pettis Co., Mo.

SIR: In reply to yours of October 1st, 1872, I have to state in regard to the entries made by M. Lampton in sections 32 and 33, 44 N., 23 W., that the tract book and papers on file in these cases have been carefully examined and compared, and it does not appear that Mr. Lampton entered the W. ½ of N. E. ¼, said sec. 32, which tract you state is claimed by the party now in possession under the Lampton title. Mr. Sensenderfer's Boonville cash entry 41,354, Sept. 27th, 1870, calling for said tract, in section 32, stands intact upon the records of this office.

It appears, however, from the tract-book abstract and application on file that Mr. Lampton located at the Warsaw office, June
96 17th, 1856, the W. ½ of N. E. ¼, said section 33 (not sec. 32), per military warrant 26,384, act of 1855, patented April 1st, 1859, and hence this office cannot go beyond the written application of the party in determining as to the land embraced in his location.

The patent was sent to the local office June 24, 1859, and, if not delivered, was probably destroyed at the burning of the Warsaw office.

It also appears that subsequently, on Nov. 21st, 1856, Benjamin W. Brice was allowed to locate the same tract in sec. 33, 44, 23, per military warrant 201, act of 1855, 60 acres.

This location was inadvertantly patented Nov. 10, 1859, and the patent sent to Hon. Owen Lovejoy, House of Representatives, May 17, 1860. Mr. Brice's location is therefore invalid, because of conflict with prior location of Mr. Lampton, and the land officers at Boonville will be directed so to inform Mr. Brice this day.

Very respectfully, W. W. CURTIS,
Acting Commissioner.

* * * * * * *

97 C. M. E. N. H. M. M.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
September 25th, 1875.

I, S. S. Burdette, Commissioner of the General Land Office, do hereby certify that the annexed is a true and literal exemplification of a letter addressed by the Acting Commissioner of the General Land Office, under date of November 15, 1872, to John Montgomery, Jr., Sedalia, Pettis Co., Missouri, as the same appears of record in this office.

In testimony whereof I have hereunto subscribed my name and

caused the seal of this office to be affixed, at city of Washington, on the day and year above written

S. S. BURDETTE,
Commissioner of General Land Office.

To which plaintiff objected.

Def't read in evidence certified copy of Lampton's application to enter said land, as follows:

98 [4—002.]

Military bounty land act of March 3d, 1855.

Land warrant No. 26384. Register's and receiver's No., 441.

LAND OFFICE, WARSAW, Mo., *June* 17, 1856.

We hereby certify that the attached military bounty land warrant No. 26384 was on this day received at this office from Mitchel M. Lampton, of Pettis, Co., State of Mo.

I, Mitchell M. Lampton, of Pettis county, State of Mo., hereby apply to locate, and do locate, the west ½ of northeast quarter of section No. 33, in township No. 44 of range No. 23, in the district of lands subject to sale at the land office at Warsaw, Mo, containing 80 acres, in satisfaction of the attached warrant numbered 26384, issued under act of March 3, 1855.

Witness my hand this 17 day of June, 1856.

MITCHEL M. LAMPTON.

Attest:

A. C. MARVIN, *Register.*
N. B. HOLDEN, *Receiver.*

LAND OFFICE, WARSAW, Mo, *June* 17*th*, 1856.

We hereby certify that the above location is correct, being
99 in accordance with law and instructions.

N. B. HOLDEN, *Receiver.*
A. C. MARVIN, *Register.*

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *August* 16, 1880.

I, M. E. N. Howell, Act'g Commissioner of the General Land Office, do hereby certify that the annexed copy of the certificate of the location made by Mitchel M. Lampton with military bounty land warrant No. 26384 for 80 acres, act of 1855, is a true and correct exemplification from the original in this office.

In testimony whereof I have hereunto subscribed my
[SEAL.] name and caused the seal of this office to be affixed, at city of Washington, on the day and year above written.

M. E. N. HOWELL,
Act'g Commissioner of General Land Office.

100 *Sensenderfer Testifies.*

WM. SENSENDERFER, d'f't, testified:

I live in Johnson county. In 1870 I lived in St. Louis and went from there to Boonville in that year. I got tired of St. Louis, settled up my business there and went to Boonville, thinking it a pleasant place to live. After going there I remembered having seen in a paper something about overlooked tracts of land, and I went to the land office & looked over to see if I could find any such. I did find and entered some 30 or 40 tracts. All I entered I entered blind; that is, I did not see any of it. Of that I entered I found 4 tracts occupied and claimed by others. I found some 10 conflicting entries & got mine cancelled & got my money back. They were prior entries. When I entered the land in dispute I knew nothing about it only that the plats in the office showed it prairie. Some 2 or 3 months afterwards in looking over the land-office book I found a double entry of W. ½, N. E. 33. Then I wrote to Washington to my lawyer and got a reply which I have lost.

101 I had never seen this land when I entered it and knew nothing about it till Oct., 1872. The first time I came to Sedalia was in September, 1871. I was a perfect stranger here then. On Main street I went into a crowd & met Mitchel M. Lampton and I joined in the conversation. He enquired my business. I told him looking after lands I had entered. He said he knew all the lands in this Co. I told him the numbers and he said he had entered it, & I supposed then he was right. I went to S. W. Mo. and back, and wrote to Washington & informed myself, and the next fall made another trip and went to Swisher's. I told him about my entry of this land & what Lampton told me the year before, and that since I was posted in the whole. I was satisfied it was my land, and Lampton's location was in sec. 33. I told him not to take my statement, but write to Washington or get a friend to and he would find it as — said. We conversed a good while; I got dinner there; left, I suppose, about 2 o'clock p. m. Lampton told me when I met him that Swisher was the present owner and occupant of the land. I did not tell him a word to the effect that I would not enter vacant land and would not pay the taxes for it. I did not tell him I broke up in St. Louis and took this way to

102 get a piece of land. I never did break up in St. Louis. I did not tell him that my business in Boonville was to look up mistakes in land entries. I told him I entered it blind. After the receipt of the letter to Montgomery—letter from Com'r Gen. Land Office—I talked to Lampton on the street in Sedalia. Lampton said he did not know how he made that mistake, but it seemed that he did make a mistake, this referring to the entry.

I heard O'Garry's testimony. I do not recall the conversation with him coming from Neal's, but I most explicitly deny what he says I said to him. I did not say it.

The Neal land in fact lay outside of his field, and was neither — nor cultivated.

Sensenderfer Cross-ex.

Cross-examined:

Before I went to St. Louis I was in tobacco & cigar business in Quincy, Ills. I went to St. Louis in the same business in 1842, and continued so till to the war. I went out in 1862, & went to sett-ing up my business. We lost $50,000, but settled up and paid all debts; finished paying in 1866. I then, in 1867, went
103 into real estate business with J. W. Laforce. We were buying and selling frequently for others and loaning money. We sometimes bought land and sold it. We in some cases took deeds to land in blank as to grantee, and when we sold we just delivered the deed as it was. That real estate business did not pay me.

When I come to Boonville I had $2,000 or $3,000 and some land in Mo., Neb., & Kan., and some mining lands in Colorado, which I had got while in mercantile business; took them in trading; out of that we got the money to pay the last debts we owed in 1868.

I went to Boonville in August, 1870; went to the land office soon—in 2 or 3 days—after I got to Boonville. I did so because just before that I saw in a paper that a Congressman in Washington had noticed in the land office in Washington that a piece of land near Des Moines was vacant, and when he went home he looked and saw it vacant, and entered it and made a good thing of it, and I might do the same. I went into the land office and spent nearly all my time—$\frac{9}{10}$ of it—there that fall. I went through the whole of the tract books of the Boonville land office and found some 500,000 acres vacant.

104 When I found a piece vacant I would write to my att'y at Washington, and when I found out it was vacant there I would enter it. I think at first I did not write to Washington, but later I did.

This was one of my first entries. I now remember I did write to Washington before I made this entry. I wrote him to see if it was vacant and he wrote it was. Afterwards, when I found that of the Lampton entry, I wrote him again. I wrote this time before I entered, because I had learned from experience there were some conflicts and mistakes in entries, and I wanted to know if this appeared vacant at Washington. I think I wrote in March, '71, about the double entry in this case. When I saw there was a double entry on the Brice land I wrote to my att'y in Washington herein *herein* that that might prove a double entry, and it might conflict with my entry. This was before I got my patent to the land. I knew that Pettis Co. joined Cooper, and that there were railroads through Pettis Co. I went through the books of all the entries in Pettis county before I made any entries. I did not go to see it till I got my patents, because I thought it worth $1.25 an acre any way. After I got
105 my patents A. C. Widdecomb told me he thought I — find some conflicts and I then made — more entries till I went & saw what I had entered.

I made all of my entries blank & I got 480 acres that I better not

have got as it is of no value. I went after I got my patent to see the land in order to see my success, and whether I had best keep on entering, & I made no entries after that.

I found the Dunkley land in Johnson county, Mo., as unoccupied; *in* was lying in centre of his farm, and the same as to Neal's land. I saw Brice's name on the books 2 or 3 months after I entered. I had been through Pettis Co. on R. R. once or twice from St. Louis to Kansas City. When I made these entries I did not think it was necessary to look outside of the records. I made 8 entries in Pettis Co., 5 of these were cancelled because — conflicting entries as shown by the records or when older patents were found.

I first met A. C. Widdecomb when I went to Boonville. He was making entries. I do not think he told me about the likel*y*hood of conflicting entries till just before he went to Washington in 1871, and then I investigated and I made no entries after that. I learned while making entries that the books were not entirely reliable
106 after that.

It was the talk in the office that those records were not entirely correct. I also learned there of the burning of the Warsaw office, and knew that books at Boonville were copies made at Washington. I saw by the books that the lands in this county was about all taken many years before. I thought these were overlooked tracts.

My object in going to see the people was not to compromise with them. When I got my patents I went to see the lands. I found the claimants. I did not offer to settle with Dunkley since this suit begun. Swisher wanted to compromise with me, he offered $5.00 per acre, and I told him his other land was worth $25.00 and this, too.

When I looked at the tract book I counted the 40s that were entered in each section, and when I found 16 40s entered in a section I looked no further.

If I found less I looked for the vacant ones.

I went to Neal's with O'Gary in Sept., 1871. I went to Swisher's a year after. Neal died a year or two ago. I can't say what
107 my conversation with O'Gary was, but I am sure I did not say what he says I did. I know if I had said it it would not be true, & I did not say it.

Prior to Montgomery's getting the letter from Com. Gen. Land Office Lampton said he was sure he entered this land. After that he said he must be mistaken. He always claimed to have *been* entered this land until 1874, when he got weak-kneed about it, and then he said it seemed as if he had made a mistake. I was at Swisher's 2 or 2½ hours. I may have tried to get Swisher to go and get the piece in 33 and give up the piece in 32 to me.

Re-examination of Sensenderfer.

Re-examined:

I did not notice the confliet in sec. 33 till 2 or 3 months after I entered this land.

A. C. Clark's Deposition.

Def't read in evidence deposition of A. C. Clark, as follows:

Question. State your name, age, and place of residence; and state where you resided in the month of June, 1856, also whether
108 you were acquainted with Mitchel M. Lampton, who now resides in the city of Sedalia, Pettis Co., Mo.

Ans. My name is A. C. Clark and — forty-six years old. I reside in Henry Co., Mo., and in June, 1856, I resided near Windsor, in the State of Missouri, and know Mitchell M. Lampton.

Question. State whether you recollect the fact of said Lampton going to the land office at Warsaw, Missouri, in or about the month of June, 1856, to enter some land either in sec. 32 or sec. 33, in township 44, of range 23, in Pettis county, Mo., and if you can by any means state the date do so, and state how you know the date.

Ans. I recollect about May or June, in the year 1856, that said Lampton, in company with Bob Means, went to Warsaw for the purpose of entering land in section 32, in township 44, of range 23, in Pettis county, Missouri, as he stated to me after he returned from Warsaw. I remember the date from the fact that I entered land in section 29, in same township and range, in April, 1856, and said Lampton entered shortly afterwards.

Question. State how near you then lived to said sec. 32 &
109 33 and how long you had then lived there; also whether you were acquainted with the land in said two sections; and, if so, how well so acquainted.

Ans. I lived about four miles west from section 32. I had lived there from about the middle of March, 1856, and I was somewhat acquainted with the land in both sections, being over the land every few days.

Question. State especially whether you were then acquainted with the west ½ of the northeast ¼ of each of said sections.

Ans. I was.

Question. If you do not remember or cannot state as to said land by No. & section, then state whether you were so acquainted with or lived by the 80-acre tract of land in dispute in the suit in the circuit court of Pettis county, Mo., between Wm. Sensenderfer and Samuel Swisher, and the 80-acre tract for which said Swisher a few years ago sued one Daniel S. Foreman in said court, and answers the foregoing questions as to the same.

Ans. In the summer of 1866 I improved the W. ½ of the S. E. ¼ of sec. 27, in township 44, of range 23, twenty-three, by building a house and breaking twelve or fifteen acres of land, and this
110 house and improvements was very near to the N. W. corner of the 80 acres in dispute between Sensenderfer and Swisher.

Question. If you state you recollect the circumstances of said Lampton going to the land office to enter land as informed of above, then state whether you know of his viewing the lands he so went to enter just before he so went; and, if so, how long before, and whether you were with him when he so viewed it.

Ans. In April, 1856, said Lampton, in company with Bob Means, J. O. Ellis, Wm. Jones, and myself, did view the land in 33, and said Lampton said he liked the land and spoke of entering it. This was in April, before he made an entry in May or June; but the next day after we viewed the land said Lampton and I were in the land office in Warsaw and he made an entry on that day, but I do not know what land he entered.

Question. State whether or not said Lampton at the time viewed the W. ½ N. E. ¼ of sec. 33, township 44, range 23. If you cannot testify to it by no, then state whether he viewed the 80-acres tract about which said Swisher sued Foreman.

111 Ans. Said Lampton at that time with us viewed the land in 32, 33, 28, and 29.

Question. State whether said Lampton then viewed the W. ½ N. E. ¼ of sec. 32, T. 44, R. 23. If you cannot testify to it by No., then state whether he viewed the land in controversy between Sensenderfer and Swisher in this case.

Ans. Said Lampton viewed all the land in sec. 32, T. 44, R. 23, he having formerly entered land there.

Question. State whether there is or was then any water, such as a creek or stream, on the W. ½ N. E. ¼ sec. 33 (or the Foreman tract), and how is it or then was as to water on the W. ½ N. E. ¼ sec. 32 (or the Swisher and Sensenderfer tract), and state anything said Lampton may have said when he viewed said land about entering the same for a stock farm or on account of the stock water on it.

Ans. There were some pools of water on the W. ½ N. E. ¼ of sec. 33 and I don't think there was any water of consequence on the W. ½ N. E. ¼ of sec. 32. Said Lampton said it would make a nice stock farm, but said nothing of entering it for himself on account of the water, that I remember.

Question. If you have not already stated fully as to the
112 conversation of said Lampton when viewing said land with a view to entering it, state said conversation fully now.

Ans. I do not recollect anything further about the conversation at the time we viewed the land than what I have stated.

A. C. CLARK.

Admitted that about 1873 Lampton conveyed by quitclaim the Swisher W. ½ N. E. ¼ sec. 33, and that soon thereafter Swisher brought suit in this court against D. S. Foreman in ejectment for the possession of said land in sec. 33, and afterwards dismissed the same.

Def't closed.

Pl'ff in rebuttal called JOHN MONTGOMERY, who testified:

JNO. MONTGOMERY testifies:

When Sensenderfer began the suit *vs.* pl'ff, pl'ff employed me & I wrote to General Land Office at Washington and got the letter a copy of which is read in evidence. I then got a copy of the Lamp-

ton patent to the W. ½ N. E. sec. 33, & I then got a quitclaim
113 deed from Lampton to Swisher for said land. I sued Foreman. I did this as a precaution to protect Swisher, because the statute of limitation was about to become a bar. I afterwards found that Sinnett had the Brice patent, and we dismissed the suit against Foreman because after examination into the matter we saw we could not maintain that suit. but thought we could this one against Sensenderfer. I don't think Swisher knew about this until after it was done; then he approved it, as he deferred to my office and action as his att'y. I never showed the Washington letter to Lampton. He always pretended that he had no claim to the Brice 80, W. ½ N. E. of 33, and that he had not entered that 80.

This was all the evidence in the case.

The court, after consideration, made a finding and entered up judgment for pl'ff, divesting def't of title to the land in dispute and vesting the same in pl'ff.

And def't on the next judicial day of said court, at the same term, filed a motion for a new trial in said case in words and figures following, to wit:

114 *Mo. for New Trial.*

STATE OF MISSOURI, } *ss:*
Pettis County, }

In the Circuit Court. Jan'y Term, 1882.

SAMUEL SWISHER }
v. }
WILLIAM SENSENDERFER. }

Now, at this time, comes the defendant and moves the court to set aside the finding and judgment and grant a new trial in this case for the reason—

Because the court admitted improper evidence in the case against the objections of defendant, and because the court erred in admitting any evidence in the case against the objections of defendant.

Because the court excluded proper evidence offered by the defendant.

Because the finding and judgment is against the evidence and against the weight of evidence & is entirely unsupported by the evidence.

Because the finding and judgment is against the law & against equity and good conscience, and is for the plaintiff when it should be for def't.

Because the finding and judgment of the court exceeds the jurisdiction of the court on the evidence and pleading.

SMITH & SHIRK,
Att'ys for Def't.

115 Which said motion was on the same day taken up by consent and considered and by the court overruled; to which defendant excepted at the time.

And thereafter, on the same day of the filing of said motion for a new trial, the defendant also filed in said cause a motion in arrest of judgment in words and figures following:

STATE OF MISSOURI, } ss:
Pettis County, }

In the Circuit Court. Jan'y Term, 1882.

SAMUEL SWISHER }
vs.
WM. SENSENDERFER. }

Now, at this time, comes the def't and moves the court to arrest the judgment in this case for the reason—

Because this court upon the whole record in the case has no jurisdiction in the cause.

Because the petition does not state facts sufficient to constitute a cause of action.

Because upon the whole record in the case the judgment of the court is erroneous.

SMITH AND SHIRK,
Att'ys for Defendant.

116 Which said motion was on the same day taken up by consent and considered and by the court overruled; to which defendant excepted at the time.

And the defendant now tenders this his bill of exceptions and asks that the same may be signed and sealed by the court and filed and made a part of the records in said cause; which is accordingly done this 3d day of February, 1882.

JOHN P. STROTHER, *Judge.* [SEAL.]

And afterwards, to wit, on the 3d day of February, A. D. 1882, it being the 28th day of the January term, 1882, of said court, the following further proceeding- were had in said cause, to wit:

SAMUEL SWISHER }
vs.
WM. SENSENDERFER. }

Now, at this day, comes the defendant and files his bill of exceptions herein, properly signed and allowed by the court, and also files his affidavit herein, praying an appeal of this cause to the Supreme Court; which said appeal is by the court granted.

117 STATE OF MISSOURI, }
County of Pettis. }

I, B. H. Ingram, clerk of the circuit court within and for the

county of Pettis and State of Missouri, hereby certify that the above and foregoing is a full, true, and complete transceipt of the records and proceedings in the case of Samuel Swisher against William Sinsenderfer as the same remains in my office.

[SEAL.] Witness my hand and seal of said court, at office, in Sedalia, this 6th March, 1882.

B. H. INGRAM, *Clerk*,
By M. F. ATHEY, *D. C.*

Proceedings in the Supreme Court of Missouri.

And afterwards, to wit, on the 10th day of March, A. D. 1882, an assignment of errors was filed in said cause, which is in the words and figures as follows, to wit:

118 In Supreme Court of the State of Missouri. April Term, 1882.

SAMUEL SWISHER, Respondent,
vs.
WM. SENSENDERFER, Appellant.

And now comes the said def't & appellant and says that in the records and proceedings of the court below in the above-entitled cause there is manifest error, and for error said appellant assigns the following, to wit:

1. That said court admitted improper and illegal testimony offered by pl'ff & respondent.
2. That said court rejected proper and legal testimony offered by appellant.
5. That the finding was against the evidence.
6. That the finding was against law.
7. That the finding was against both law and evidence and against the law under the evidence.
8. That the finding was against the weight of evidence.
9. That the judgment was rendered in favor of the pl'ff & respondent when it should have been rendered for the def't & appellant.
10. That said court overruled the motion for a new trial made by appellant.

Wherefore appellant prays to be restored to his rights lost by said errors, and to that end that the judgment rendered herein in the circuit court be reversed & for naught held, and that the cause and petition be dismissed by the court.

SMITH & SHIRK,
Att'ys for Appellant.

And now come the —— and for joinder in error say there is no error in the record and proceedings of said —— in said cause, as assigned by said ——.

—— ——,
——.

Endorsed: No. —. Assignment of error.
7—281

119 And afterwards, to wit, at the April term, 1884, of said court and on the 26th day of April, 1884, the following further proceedings were had in said cause, to wit:

* * * * * * *

SAM'L SWISHER, Resp.,
vs.
WM. SENSENDERFER, App.

* * * * * * *

Come now the parties in the above causes, by their respective attorneys, and submit the same to the court on their briefs.

And afterwards, to wit, at the same term of said court and on the 5th day of May, A. D. 1884, the following further proceedings were had in said cause, to wit:

* * * * * * *

SAM'L SWISHER, Resp.,
vs.
WM. SENSENDERFER, App.

* * * * * * *

Now, at this day, it is ordered that the above and foregoing causes be referred to the commissioners.

120 And afterwards, to wit, on the 16th day of February, A. D. 1885, the following further proceedings were had in said cause to wit:

SAMUEL SWISHER, Respondent,
vs.
WILLIAM SENSENDERFER, Appellant.

Appeal from Pettis county circuit court.

Now, at this day, come again the parties aforesaid, by their respective attorneys, and the court here, being now sufficiently advised of and concerning the premises, do consider and adjudge that the judgment aforesaid, in form aforesaid by the said Pettis county circuit court rendered, be in all things affirmed and stand in full force and effect; and it is further considered and adjudged by the court that the said respondent recover against the said appellant his costs and charges herein expended and have therefor execution. (Opinion filed.)

Which said opinion is in the words and figures as follows, to wit:

121 *Opinion Sup. Court.*

SAMUEL SWISHER, Resp't,
vs.
WM. SENSENDERFER, Appellant.

Appeal from Pettis circuit court.

Sensenderfer *and* Swisher in the circuit — of Pettis county, in ejectment, to recover the west half of the northeast quarter of
122 section 32, T. 44, R. 23. The case was removed to the United States circuit court.

The defendant in that case, Swisher, had only an equitable defence, and according to the practice in the Federal courts could not set up such claim to the action of ejectment; but in compliance with the practice there he filed his bill in equity to assert his equitable title and asked a stay of proceedings in the ejectment suit until the equity case should be disposed of.

The averments of the bill in substance were that one Lampton had entered the land in 1859 and received a certificate from the land office evidencing that fact; that through the mistakes of the local officers the matter was improperly certified to the General Land Office; that Lampton immediately took possession of *of* the land and fenced part of it; that he sold it to one Mansur, who took possession and enclosed the whole of it, and in 1865 sold it to respondent, who has ever since been in actual possession; that there had been a continued actual possession ever since Lampton's entry, and that taxes had been regularly paid all the time; that appellant, with full notices of these facts and of respondent's rights and for the purpose of defrauding respondent, had procured a patent to said land.
123 Then by stipulation the case was returned to Pettis county, when the defendant, Sensenderfer, answered, and the case was tried and judgment rendered for Swisher, from which appellant came to this court.

The evidence in the case was voluminous, documentary, and parol, and, we think, very satisfactor-y establishes the fact that Lampton entered the land in controversy in 1856, took possession, and that he and his grantees have been in continuous possession under claim of title ever since.

The testimony of the witnesses Means and Lampton clearly shows that Lampton went to the land office at Warsaw, paid the gold to Marvin, the register, for a land warrant No. 26384, which was located on the W. ½ N. E. q'r sec. 32, T. 44, R. 23; that Lampton's name was entered on the face of the plat book, and that a certificate of entry therefore was given to him; that he signed his name to blank application, which he left with Marvin to be filled up. Lampton and Means swear to the certificate of entry, and in further evidence of the fact it is shown that afterwards the identical land was run out by the county surveyor from the certificate itself. This with other facts and circumstances in evidence equally irresistable goes to establish that fact beyond controversy.

124 The evidence shows, we think, that the land officers at Warsaw filled up Lampton's application with section 33 instead of 32, and so reported at the General Land Office at Washington, and the records at Warsaw having been burned the mistake was naturally perpetuated from Washington in the certificates of entries afterwards made out, based on the reports from Warsaw and transmitted to Boonville. There is much other evidence tending to confirm this theory, but which we deem it useless to detail.

The evidence further tends to prove and the circuit court found that at the time the alleged entry by Sensenderfer was made there is no reasonable doubt but that he had knowledge of the adverse claim of Swisher or had such means of knowledge as to put him upon inquiry. (See Mason *v.* Black and authorities there cited, decided Feb'y 9, 1885.)

But in this case it is useless to multiply words. It is admitted by counsel that "in the main it is so much like Sensenderfer *v.* Kemp that that case decides this."

That case, Sensenderfer *v.* Kemp, was decided on the 2d of February, 1885.

Upon the authority of that case and the authorities then cited the judgment of the circuit court is affirmed.

All concur.

H. CLAY EWING.

125 And afterwards, to wit, on the 21st day of June, 1886, the following further proceedings were had in said cause, to wit:

SAMUEL SWISHER, Resp., *vs.* WM. SENSENDERFER, App. } Appeal from Pettis County Circuit Court.

Now, at this day, there is presented to the Honorable John W. Henry, chief justice, a writ of error to reverse the judgment in the above cause; a citation, directed to the said respondent, citing and admonishing him to be and appear at a Supreme Court of the United States on the second Monday of October next; also a supersedeas bond in the sum of $500.00; which said writ of error is allowed, said citation signed, and bond approved and ordered to be filed and made a part of the record herein.

And thereupon it is further ordered that a supersedeas be granted staying all further proceedings upon the judgment herein until the determination of this cause in the Supreme Court of the United States.

Which said bond is in the words and figures as follows, to wit:

126 Know all men by these presents that we, William Sensenderfer, as principal, and Edward L. De Garmo and Wm. E. Crissey, as sureties, are held and firmly bound unto Samuel Swisher in the full and just sum of five hundred ($500.00) dollars, to be paid to the said Samuel Swisher, his heirs, administrators, or assigns; to

which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals and dated this nineteenth day of June, in the year of our Lord one thousand eight hundred and eighty-six.

Whereas lately, at the October term, A. D. 1884, of the supreme court of Missouri, in a suit depending in said court between Samuel Swisher, respondent, and William Sensenderfer, appellant, judgment was rendered against the said appellant, and the said appellant having obtained a writ of error of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said respondent, citing and admonishing him to be and appear at a Supreme Court of the United States to be held at Washington, D. C., on the second Monday of October next:

Now, the condition of the above obligation is such that if the said appellant shall prosecute said writ to effect and answer all damages and costs if he fail to make good his plea, then the above obligation to be void; else to remain in full force and virtue.

WILLIAM SENSENDERFER. [SEAL.]
EDWARD L. DE GARMO. [SEAL.]
WM. E. CRISSEY. [SEAL.]

Sealed and delivered in presence of—
SAM'L P. SPARKS.

June 21st, 1886.
Approved by—
JNO. W. HENRY, *Judge.*

UNITED STATES OF AMERICA,
State of Missouri, County of Johnson, } *sct:*
Western District of Missouri,

Before me, Samuel P. Sparks, a notary public within & for Johnson county, State of Missouri, personally appeared Edward L. De Garmo, to me well known, who upon oath state- that he is worth over and above his indebtedness the sum of three thousand dollars, and that he owns real property to that amount, subject to execution, in Johnson county, Missouri.

EDWARD L. DE GARMO.

Subscribed and sworn to before me this 19 day of June, 1886.
[SEAL.]
SAM'L P. SPARKS,
Notary Public, Johnson Co., Mo.

UNITED STATES OF AMERICA,
State of Missouri, County of Johnson, } *sct:*
Western District of Missouri,

Before me, Samuel P. Sparks, a notary public within and for Johnson county, State of Missouri, personally appeared Wm. E. Crissey, to me well known, who upon oath state- that he is worth

over and above his indebtedness the sum of five thousand dollars, and that he owns real property to that amount, subject to execution, in Johnson county, State of Missouri.

WM. E. CRISSEY.

Subscribed and sworn to before me this 19 day of June, 1886.

[SEAL.] SAM'L P. SPARKS,
Notary Public, Johnson Co., Mo.

UNITED STATES OF AMERICA,
Western District of Missouri, } *sct:*
State of Missouri, County of Johnson,

I do hereby certify that the parties subscribing the within bond are respectively over the age of twenty-one years and are competent to contract, and that their signatures to said bond are genuine. I further certify that said bond is good and sufficient.

Witness my hand & seal this 19 day of June, 1886.

[SEAL.] SAM'L P. SPARKS,
Notary Public, Johnson Co., Mo.

[Endorsed:] No. —. United States circuit court, western district of Missouri. —— —— *vs.* —— ——. Appeal bond. 8—. Dated — day of ——, 187–. Filed — day of ——, 187–. —— ——, clerk.

127 STATE OF MISSOURI, *sct:*

I, Henry W. Ewing, clerk of the supreme court of the State of Missouri, do hereby certify the above and foregoing to be a full, true, and complete transcript of the record and proceedings in the foregoing-entitled cause as fully as the same remains of record and on file in my office.

Seal of the Supreme Court of Missouri.

In witness whereof I have hereunto set my hand and affixed the seal of said court. Done at office, in the city of Jefferson, State aforesaid, this 18th day of September, A. D. 1886.

HENRY W. EWING, *Clerk.*

Endorsed on cover: Missouri supreme court. No. 281. William Sensenderfer, plaintiff in error, *vs.* Samuel Swisher. Filed January 3, 1887.

Assignment of Errors.

WILLIAM SENSENDERFER, Plaintiff in Error,
vs.
SAMUEL SWISHER, Defendant in Error.

In error to the supreme court of the State of Missouri.

Comes now the said plaintiff in error, William Sensenderfer, and says that in the record and proceedings in the above-entitled cause there is manifest error, and for error said plaintiff in error assigns the following, to wit:

First. That the circuit court of Pettis county, Missouri, had no jurisdiction, legal nor equitable, of the matters at issue in said cause.

Second. That the circuit court of Pettis county, Missouri, admitted illegal, incompetent, and irrelevant testimony offered by the defendants in error over and against the plaintiff in error.

Third. That the bill or petition of the defendant in error, Swisher, did not state facts to constitute any cause of action against the plaintiff in error.

Fourth. That the evidence in the case does not support the special finding of facts and decree of the court thereon.

Fifth. That the finding and decree was against equity and the law and the evidence and the weight of the evidence at the trial.

Sixth. That the finding and decree of the circuit court of Pettis county, Missouri, under the pleadings and the evidence, was contrary to both law and equity, and should have been for the plaintiff in error instead of for the defendant in error.

Seventh. That the said circuit court of Pettis county, Missouri, erred in refusing to sustain plaintiff in error's motions for a new trial and in arrest of the finding and decree.

Eighth. That the supreme court of the State of Missouri erred in not reversing the decree of the circuit court of Pettis county, Missouri, on account of the errors above enumerated.

Whereupon plaintiff in error prays the court to reverse the judgment of the said supreme court of Missouri affirming the judgment of the circuit court of Pettis county, Missouri, and to afford him all just, equitable, and proper relief, for which he will ever pray.

L. H. CAMPBELL,
S. P. SPARKS,
Per CAMPBELL,
Attorneys for Plaintiff in Error.

[Endorsed:] Sup. court U.S. 1890, Oct'r term. No. 281. Wm. Sensenderfer, pl'ff in error, *vs.* Samuel Swisher. Assignment of errors. Office Supreme Court U. S. Filed Jan. 15, 1890. James H. McKenney, clerk.

FILED
APR 3 1890
JAMES H. MCKENNEY
CLERK

IN THE

SUPREME COURT

OF THE UNITED STATES.

WILLIAM SENSENDERFER, P. E.,
vs.
SAMUEL SWISHER, D. E.

No. 281.

Error to the Supreme Court of Missouri.

PLAINTIFF IN ERROR'S ABSTRACT OF THE RECORD,

Assignment of Errors and Brief.

LEVIN H. CAMPBELL.
SAMUEL P. SPARKS,
Attorneys for Plaintiff in Error.

Spencer & McDonald, Printers, Warrensburg, Mo.

IN THE

SUPREME COURT

OF THE UNITED STATES.

WILLIAM SENSENDERFER, P. E.,
vs.
SAMUEL SWISHER, D. E.

No. 281.

Error to the Supreme Court of Missouri.

On the fourteenth day of August, 1873, the Plaintiff in Error, Sensenderfer, began his suit in the Circuit Court of Pettis County, Missouri, against the Defendent in Error, Swisher, in ejectment, for possession of West half of Northeast quarter Sec. 32, Twp. 44, Range 23, in said Pettis County. Afterward the case was removed to the United States Circuit Court. In that Court Defendent in Error herein filed, May 1, 1878, his cross bill in equity, on which this case was finally tried. After filing said bill the two cases were by consent removed to the Pettis Circuit Court, where issue was joined and trial had on said cross bill as an original bill in equity.

Said bill alleges that M. M. Lampton, by virtue of Military bounty Land Warrant, No. 26,384, issued

under act of Congress of March, 1855, located and entered said land, and the same was evidenced by entry on the plat book and record in the District Land Office, and that a duplicate certificate was duly issued to Lampton, evidencing that fact. That Lampton took and held possession of, and paid taxes on it as his own till October 11, 1860, when he sold and conveyed it to Geo. Mansur. That he took and held possession and paid taxes till October 11, 1865, when he sold and conveyed it to Swisher. That he took and held and paid taxes on it to filing of the bill. That all said deeds were duly recorded. That Swisher and his predecessors in said title made lasting and valuable improvements on the lands, and paid the purchase money in good faith. That Sensenderfer, with full notice of all this, and to cheat and defraud Swisher, procured and obtained a patent from the United States, conveying said land to him, and sets up claim to the same by virtue of the patent. That Lampton and the others had never got a patent to the land under Lampton's entry.

The prayer is for injunction as to the ejectment suit till the trial of this, and that the title be divested out of Defendant and vested in Plaintiff and for all proper relief.

An amended answer filed in the State Court after this cause came there admits Plaintiff has the patent from United States, and claims under it and admits Swisher's possession, and otherwise is a general denial. It also says instead of Lampton entering the land in dispute with said Land Warrant, that on June 17, 1856, at the Land Office at Warsaw, he duly made application to locate said Warrant on and enter the West half of the Northeast quarter of Sec. 33, Twp. 44, Range 23, and did locate the same on and enter said last named land, and the same was duly entered

on the records and reported to all proper offices and officers, and that was the land and the only land embraced in said duplicate receipt; that April 1, 1859, the same was conveyed to him by patent. That the land in dispute was vacant and appeared so on the books of the General Land Office, and the local one at Boonville, and it was there subject to entry, and relying on those facts, Defendant, in good faith, Sept. 27, 1870, entered said land at the Boonville Land Office, and bought it for cash, then paid the United States. And without knowledge or notice of claim or anybody adverse to the United States. And on January 10, 1871, there was duly issued and delivered to him a patent for it, and it would be inequitable to deprive him of it.

Answer further says, if there was any error by Lampton or the officers of the Land Department, there was all the while ample means under the acts of Congress to correct it, and it can only be corrected as thus provided, and not by this Court, and this Court has no jurisdiction herein. Also, that now, after more than twenty years and the intervention of Plaintiff in Error's rights, equity will give no relief. Also pleads the action is barred by the 10 years statute of limitations and the twenty years limitation. And prays to recover judgment; that Plaintiff has no title or claim, and for possession and rents, &c. The answer also has a count as a petition in ejectment, alleging title and rights of possession February 28, 1871, and ouster by Swisher March 1, 1871, and unlawful withholding to his damage $1,000, and the monthly rents are $25, and prays judgment as in ejectment.

The reply was a general denial.

A trial was had before the Court in Chancery and the.....judgment finds that June 17, 1856, M. M. Lampton entered the land in dispute with said War-

rant No. 26,384, at Warsaw office, and received a certificate evidencing that fact, and the same was duly entered on the books of the office. Finds the chain of title as in the petition, and that parties holding the same made lasting and valuable improvements and paid taxes till 1871. That Sensenderfer procured the patent to him for the land and recorded it in Pettis County. That Swisher was the equitable owner, and Sensenderfer made entry and got his patent with full notice.

The decree divests Sensenderfer of the legal title and vests it in Plaintiff and gives judgment for Plaintiff for costs.

THE EVIDENCE.

From Bill of Exceptions it appears that when Swisher offered evidence Sensenderfer objected because the petition does not state facts sufficient to constitute a cause of action in that the Court cannot correct any error of the officers of the United States government, except when said officers made a mistake in matter of law, and where a patent has been obtained by actual fraud, and because the fraud is not sufficiently set out. The exception was overruled and Sensenderfer duly excepted.

Swisher himself testified that he bought the land in dispute from Mansur, in October, 1865, and held it ever since. The south half was fenced and in cultivation, and he fenced and broke the north half the next spring. He bought 500 acres with this 80, and the house was 100 yards east of the south 40 of this. In 1870 there was hedge fence on three sides and across the middle of this land. When he bought of Mansur, M. and his wife had parted and M. boarded with witness two or three months, and they then settled up, and witness got his deed in Sedalia and never saw M. after. Had written to his people in Ohio to

find him. Witness never got any title papers but his deed from M. When Mansur went away he left his trunk at witness' house and never sent for it. After about three months witness opened it and found there had been considerable papers in it, with writing on them, but the mice had eaten them so they could not be made out except that one was an account book. Witness knew of no defect in the title when he bought. Witness first saw Sensenderfer in 1872, when he came to witness' house and told him he had eighty acres of witness' land. Sensenderfer seemed to want to sell to Swisher, but did not put a price on it then. At a subsequent time Sensenderfer told Swisher he would take $25 per acre. Swisher of told him to keep the land. When Sensenderfer first came he did not know where it was. Witness asked Sensenderfer why he did not enter raw land. He said he would not pay taxes on raw land for it. That he had been broke up in merchandising in St. Louis, and took this way to get a piece of land. That he had been in the Boonville Land Office hunting up mistakes in entries.

Swisher read deed from Mansur to himself of date October, 1865.

On cross-examination witness said when he bought he got no abstract of title and does not know that he inquired as to the title of Mansur or any one. Never looked at the plat of entries in Recorder's office then, nor got any one to. When Sensenderfer first came to my house I had just got up from a bed of sickness. That Sensenderfer told him that Lampton had entered land in Sec. 33. That after that his attorney in this case got a deed from Lampton to the land in Sec. 33, and brought suit vs. one Foreman for it and finally dismissed it. That witness knew about all this, but did not direct it. Left that to his attorney.

R. D. Means said he lived in Pettis County since 1832, and entered a good deal of land at the Warsaw office, for others, and 600 or 700 acres for himself; in all 2,000 or 3,000 acres. Lived one and one-half miles from this land in 1855-6. Witness helped carry flag in some of the government surveys and after in 1830-odd, helped survey this land. When land was entered at Land Office they wrote the entryman's name across it on the plat. Witness had looked to see if all the land in that neighborhood was entered while office was at Warsaw, and found it was. Witness first met Lampton in the fall of 1855, took him out and showed him vacant land in witness' neighborhood. Witness and Lampton went to Warsaw and Lampton entered Northwest quarter of Sec. 33, and East half of Northeast quarter Sec. 32. That Lampton went back to Kentucky and returned in the spring of 1856, and entered other lands including a forty south of this in dispute. That Lampton wanted this and thought he had it surrounded so no one could take it. He recollects Lampton also entering the Northeast one-quarter of Southwest quarter of Sec. 33, he thinks his last entry. That finally one Smoote came in there and said he had entered this in dispute. Lampton and witness then went to Warsaw and found it was not entered, and Lampton then entered it, and got a certificate to that effect. Lampton then got J. W. Williams, surveyor of Henry County, to survey his land, and he did so from the certificate, witness carrying the chain. He surveyed Lampton's whole tract from the papers. Lampton built a house and his garden ran near to, but not onto, this land. Lampton boasted his land lay like a book. Six forties in each Section, was a mile one way and three-fourths the other. Thinks he fenced part of it near the house. Then sold to Mansur. Never saw the certificate since that survey. Says when Lampton went to enter this land

he had Gold, and Marvin, register of the Land Office, offered to sell him a Land Warrant and he paid Marvin the money, and M. said he would use the warrant. That he thinks Lampton signed application in blank and Marvin said he would fill it up. That he is not certain whether the application was filled up or not when Lampton signed it. He says he cannot be mistaken as to the certificate describing this land. Lampton put out orchard but not on this in dispute. Thinks he fenced some of this in dispute in 1857. Williams' survey of this was in 1856. There is water on West half of Northeast quarter of Sec. 33, but does not recollect hearing Lampton say he thought of entering it for the water. Lampton already had water on Northwest quarter of Sec. 33. There is no water on West half of Northeast quarter of Sec. 32. Mansur made no improvements on the land in dispute.

M. M. Lampton testified that in fall of 1855 he entered 240 acres of land in Secs. 32 and 33, Twp. 44, Range 23, but cannot describe it. It lay together, longest north and south. Afterward entered some more. Does not know how it lay, only some of it was south of the first entry. Means was with him when he made his entries. What he entered in spring of 1856 was some north and some south of his house. Entered the eighty in controversy, in June, 1856. Smoote came in and went to Warsaw, and thought he had entered it. Witness and Means went to Warsaw, and found he had not. Witness then entered it, paying gold. But there was some talk about a Land Warrant. Witness signed a blank application and gave it to Marvin, register, and depended on him to fill it up, as Marvin had been recommended, and he said he would fill it up all right. He gave witness a certificate for the land in dispute. Smoote had entered a forty witness wanted, and Marvin said he thought Smoote would cancel his entry, as it was not

where he wanted it, and if so, witness could have it. The next month witness went and entered the other forty and that was the last. This put his land three-fourths of a mile north and south and one mile east and west. That Williams, surveyor of Henry County, surveyed all his land, including this, from the certificates of entry. He began his house before the entry of this in dispute. His house was 75 or 100 yards from this, and thinks he fenced part of this near the house. Witness occupied this whole tract till 1859, when he sold it all to Mansur, and M. went into possession. Mansur gave him a mortgage for balance of purchase money. Witness gave Mansur his certificate of entry. The deed to Mansur was drawn from the certificates. When M. sold to Swisher they paid witness and he satisfied the mortgage. Never got patents to any of his lands. He paid taxes on this while he had it. Saw Sensenderfer and talked to him about his entry. Did not tell him it seemed almost impossible that he should have made a mistake, nor that it must have been a mistake on his part, nor anything of that kind. Says the paper he signed at Warsaw was a printed blank. Thinks it was the Land Warrant. Knows John Montgomery, attorney in this case; corresponded with General Land Office about this matter. And after that witness talked to Sensenderfer, but did not tell him he (witness) had made a mistake.

After this trouble got up witness made a quit claim deed to Swisher for west half of northeast quarter of Sec. 33, because Swisher agreed to not hold him on his warranty if he would. Says he knows he wanted to enter the land in dispute, and that he did not want that in Sec. 33, and he never claimed it and did not intend to enter it. That what he signed in blank at the Land Office was the application, and Marvin said he would fill it up and fix it all right.

Tom O'Gary testified that in 1871 or '72 he took Sensenderfer from Windsor, Mo., to the house of one Neill, and on the way back Sensenderfer told him his business was to hunt up mistakes in land entries and enter the land. Witness asked if he found a poor man with land by a mistaken entry, if he would take it from him. Sensenderfer said he would be easy on such and let him have it cheap. Witness asked him why he did not enter raw lands, and he said he would not pay taxes on it for it. That he wanted improved lands of rich men, and he would make them pay well for it.

It was shown that the Warsaw Land Office was burned in the fall of 1861, and that the business of it was transferred to the Boonville Land Office, and that the books in the latter office, showing the entries at Warsaw, are copied from the books in the General Land Office at Washington, made up from the reports and original papers sent up from the Warsaw office. It was shown by deposition of Gustave Richie, register of said Boonville office, that as shown by said books in that office, M. M. Lampton, on November 16, 1855, entered at Warsaw the east half of northeast quarter of Sec. 32, and northeast quarter of Sec. 33, for cash. And on April 26, 1856, he entered north half of southeast quarter of Sec. 32, and the northwest quarter of southwest quarter of Sec. 33, for cash. And on July 5th, 1856, he entered the northeast quarter of southwest quarter of Sec. 33, for cash. And on June 17, 1856, he entered west half of northwest quarter of Sec. *thirty-three*, with Military Bounty Land Warrant, No. 26,384. And that November 21, 1856, B. W. Brice entered east half of northeast quarter of Sec. 33, with such warrant. No. 201. And that Defendant, Wm. Sensenderfer, September 27, 1870, entered at Boonville the west half of northeast quarter of Sec. 32, for cash. This witness also identified

and furnished a copy of a letter from Commissioner of General Land Office, of November 15, 1872, to Register at Boonville, saying that the entry by Brice of west half of northeast quarter of Sec. 33 was in conflict with Lampton's prior entry of the same, and the patent to Brice inadvertently issued, and was sent to Hon. Owen Lovejoy, M. C., and directing to inform Brice that on his relinquishment of patent his Land Warrant would be returned, and he could re-locate it.

Deposition of J. N. Gott, formerly Receiver in Boonville office, said, from spring of 1870 during that year Sensenderfer was engaged in looking up lands as shown by the records in that office to be vacant, with a view to entering them. That he checked off on plats that entered, and the other was supposed to be vacant, and from that made his entries. The entries on the tract book certified from Washington were not always correct, and Sensenderfer found that out while there, but did not say at what time. Sensenderfer made entries north and south of Missouri river. He heard him say that after entry he went to see the lands and found some of them occupied and claimed. Also said he corresponded with an attorney in Washington after he found there were adverse claims. That any one who can read writing can tell from those books what land is vacant, and Sensenderfer pursued the same course as others desiring to enter lands at that office. That the books in that office are open to the inspection of all the lands not marked entered are regarded as vacant and subject to entry, and such are the instructions from Washington. That it had been supposed all lands in Pettis County were entered, but close inspection showed some vacant.

Swisher put in evidence a patent from United States to B. W. Brice, of date November 10, 1859, to the west half of northeast quarter of Section 33, Twp. 44, Range 23, under the Brice entry aforesaid. To

this Sensenderfer objected, because irrelevant and because of the prior entry of the same by Lampton, and because before the issue of said patent, the same land had been patented to Lampton, as shown later in the Bill of Exception. Objection was overuled and Defendant duly excepted.

Swisher offered a plat of Pettis County, with the following certificate to it: "I, Mark L. Means, Register of the Land office at Warsaw, Missouri, do certify that this and the accompanying Township plats embrace all the territory in Pettis County, Missouri, with the names of the original purchasers endorsed on each tract purchased at said Land Office, as appears by the original plat books and records at said office, and the said plats are correctly transcribed with endorsements thereon.

Given under my hand this 1st day of July, 1858.

M. L. MEANS, Register.

It was admitted that Means was then Register and made the certificate, and the map or plats has since been in the proper office in Pettis County. Defendant, Sensenderfer objected to the plat or map because not certified as required, and because it does not purport to be a copy of any record, memoranda or paper in the Land Office, and because it is not made as required by the law under which it was procured in that the number of acres and number of survey is not given. The objection was overruled and Sensenderfer duly excepted.

Said plat has on it simply the names of those who purport to have entered the different tracts of land marked on said tracts. But without date or number of acres or No. of survey. Swisher put in evidence the entries marked on Secs 32 and 33, Twp. 44, Range 23, on which Lampton is marked as having entered northeast quarter and north half of southeast quarter of Section 32, and northwest quarter and

north half of southwest quarter of Sec. 33. And B. W. Brice the northeast quarter of Sec. 33. Swisher put in evidence a mortgage from Lampton to J. H. Caldwell, dated and recorded January, 1858, conveying this land in dispute. Also a Deed of Trust from Lampton to R. Allen for Bushnill & Tutt, covering this land, dated December, 1858, and recorded January, 1859. Also Warranty Deed from Lampton to Mansur, dated and recorded October, 1860, and a mortgage from Mansur to Lampton of same date and record. Also a Warranty Deed from Mansur to Swisher, dated October, 1865, and recorded January, 1866. To all of which Sensenderfer objected, because irrelevant and not in the chain of title of Sensenderfer, or from any one in said chain, and not deeds the record of which imparts any notice to Sensenderfer. The objection being overruled, Sensenderfer duly excepted.

Swisher showed by certified copy of reports of the register of the Warsaw Land Office, made to the Register of Lands of Missouri, that on December, '56, A. C. Marvin, register, reported to that office that Lampton had entered the west half of northeast quarter of Sec. 32. And November 15, 1857, M. L. Means, register, reported that B. W. Brice entered west half of northeast quarter of Sec. 33.

It was shown that in 1857 this land was assessed to Lampton. From '57 to '60 no tax book can be found; for 1861-2-3 it is assessed to Mansur. Is not assessed for '65. For '66 cannot find tax book. For 1867-8 to Lampton. From 1869 it is assessed to Swisher. The books show these taxes all paid.

It was shown by mesne conveyances duly recorded, that the interest of Brice in west half of northeast quarter of Sec. 33, passed to one Foreman in 1868, and he took possession and is still holding it. All this subject to the same objection of Sensenderfer

as urged to the deeds under Lampton, Sensenderfer saving the point by exception.

Means recalled and said he kept a plat of that township till the land was all entered, and from that the books at Warsaw office and what the officers there told him he knew the land in that township was all entered before 1869-70. Swisher closed.

Sensenderfer put in evidence his patent from the United States of January 10, 1871, to the land in dispute. Also an exemplification of the record in the General Land Office of a patent from United States to M. M. Lampton, of date April 1, 1859, conveying the west half of northeast quarter of Section 33, showing it had been entered by said warrant No. 26,384, Sensenderfer put in evidence a certified copy of Lampton's application to enter as follows:

"Military Bounty Land Act of March 3, 1855, "Land Warrant No. 26,384, register and receiver No. "441.

LAND OFFICE, WARSAW, MISSOURI, June 17, 1856.

"We hereby certify that the attached Military "Bounty Land Warrant No. 26,384 was on this day "received at this office from Mitchell M. Lampton, of "Pettis County, Missouri."

A. C. MARVIN, Register.
N. B. HOLDEN, Receiver.

"I, Mitchell M. Lampton, of Pettis County, State of "Missouri, hereby apply to locate, and do locate, the "west half of northeast quarter of Section No. 33, in "Township 44, of Range No. 23, in the district of "lands subject to sale at the land office at Warsaw, "Missouri, containing 80 acres, in satisfaction of the "attached Warrant No. 26,384, issued under the act "of March 3, 1855.

MITCHEL M. LAMPTON.

Attest: A. C. MARVIN, Register,
N. B. HOLDEN, Receiver.

LAND OFEICE, WARSAW, MISSOURI, June 17, 1856.

"We hereby certify that the above location is "correct, being in accordance with law and instruc- "tions. N. B. HOLDEN, Receiver,
A. C. MARVIN, Register.

Sensenderfer read a certified copy of the record in the general land office of a letter from the Commissioner of the General Land Office to the Register of the Land Office at Plattsburg, Mo., dated March 22, 1855, from which we take the following:

"You also appear to be laboring under a misap- "prehension in supposing the application of a pur- "chaser to be a mere matter of form. Such is not "the fact. By the act of Congress, approved Feb. 24, "1810, every person making application at any of the "Land Offices of the United States for the purchase, "at private sale, of a tract of land, is required to pro- "duce to the Register a memorandum in writing, de- "scribing the tract which he shall enter by the proper "number of section, half-section, or quarter-section, "(as the case may be), and of the Township and "Range, *subscribing his name thereto*, which memo- "randum the Register shall file and preserve in his "office. *Such written application forms the foundation "of every entry, and is made to govern in all cases* in de- "ciding the question as to what particular tract of "land was entered, and under no circumstances is it "admissible to alter in any manner the affidavit and "application of the purchaser. The filling up of the "application is no part of the official duty of the "Register or Receiver. If requested to do so you "may fill up the application, but when signed by the "applicant it becomes his own act, and he alone is re- "sponsible for any errors that may exist therein."

Sensenderfer put in evidence the copy of a letter from Commissioner of General Land Office, November 15, 1872, to John Montgomery, Jr., Attorney for

Swisher herein, in answer to one from him about this same matter, in which the Commissioner informs him that the records in the General Land Office show Lampton entered the land in Sec. 33 and not in Sec. 32, and it was patented to him, and says: "And hence this office cannot go beyond the written application of the party in determining as to the land embraced in his location." It also says Brice's entry is invalid and the office at Boonville would that day be directed to so inform Brice. This letter is the same date as the one received by the Boonville office above referred to, directing them to so inform Brice, &c.

Sensenderfer testified that in August, 1870, he settled his business in St. Louis and went to Boonville to live. Having heard of tracts of land being overlooked in making the entries, and left vacant, he went into the land office to see if he could find and enter any such. He found some and entered thirty or forty tracts, four of which he found occupied and claimed by others, and some ten conflicting entries; that is, had been entered before; and he got his entries cancelled. That he made all his entries, including this one, without seeing the land, and knew nothing of it only as shown by the books in the land office. Some months after this entry, in looking over the books he saw the double entry in Sec. 33. In September, 1871, he came to Sedalia for the first time, and accidentally met Lampton and told him he was looking after land he had entered. Gave the number of this to Lampton, and he said he had previously entered, and Swisher now owned and occupied it. Witness supposed then that he had. But he wrote to Washington and found otherwise. In October, 1872, went to see the land and then saw Swisher. He told Swisher of his conversation with Lampton, and that he had since informed himself and now was satisfied it was his (Sensenderfer's) land, and Lampton's entry

in Sec. 33, and that if Swisher would write to Washington he would find it so. Did not tell Swisher that he would not enter vacant land as stated by Swisher, nor that he broke up in St. Louis. Did not so break up. Did not tell him his business in Boonville was to find mistakes in entries. Told him he entered it blind. After witness got copy of letter from the Commissioner of the General Land Office to Montgomery, witness talked to Lampton in Sedalia. Lampton said he did not see how he made that mistake, but it seemed he did make a mistake, referring to the entry. Witness denies saying what O'Gary says he did. On cross examination he said he was in the wholesale tobacco business in Quincy, Ill., till 1842, when he went to St. Louis, in the same line till the war, then till 1868 was settling up the business. They lost largely, but paid out in full and had some left. In 1867 to '70 he was doing some real estate business in the city with one Laforce. When he came to Boonville had $2,000 or $3,000 and some lands in Missouri, Nebraska, Kansas, and Colorado, which he had gotten while in mercantile business, taken in trade. Went into land office to look up vacant lands because he saw in a paper that a member of Congress from Iowa, while in Washington, found some land near Des Moines vacant, as shown there, and when he went home he saw it and it was not occupied. He then entered it and made a good thing of it, and witness thought he might do so. He found some 500,000 acres vacant in Missouri. When he found a piece appeared vacant there, and if otherwise it seemed satisfactory, he entered it. At first he did not so write. Wrote to Washington before he made this entry. When he saw the double entry in Sec. 33 he wrote his attorney in Washington to see to it as it might prove a conflict with his. He got word it did not, and after that got his patent. He knew Pettis joined Cooper

County and had a railroad through it. After he got his patent was told by A. C. Widdecomb he might find conflicts. He then went to see it. Says 480 acres of the land he did enter was of no value. Went to see his success in entering and did not enter any more. Had been through Pettis County once or twice to Kansas City before making entries. Witness knew of the burning of the Warsaw office, and the books in Boonville were copies, and that most of the land in Pettis County was entered long before, but thought these were overlooked tracts. Went to see the lands after he got his patents. Since this suit was begun Swisher offered him $5 an acre to compromise. Witness told him it was worth $25. Says he is sure he did not say what O'Gary says he did, because it would not be true if he did say it. Prior to Montgomery getting the letter from the Commissioner of the General Land Office, Lampton said he was sure he entered this in Section 32; after that he said he must have been mistaken.

Sendsenderfer read deposition of A. C. Clarke, who said he lived near this land in dispute, in 1856. That that summer he built a house on land adjoining and entered same that year, in April. In April, 1856, Lampton, with witness, R. D. Means, and one Ellis, and one Jones, viewed the west half of the northeast quarter of Sec. 33, and there was water on it and none on that in dispute. And Lampton spoke of entering that in Sec. 33, and said he liked it and it would make a good stock farm. Witness and Lampton were in the Land Office at Warsaw the next day and Lampton entered some land. Then after that, in May or June, Lampton and Means went to Warsaw again to enter some land. But does not know what Lampton entered either time. It was admitted that about 1873 Lampton conveyed by Quit-Claim the west half of the northeast quarter of Sec. 33 to Swisher and he sued

Foreman in ejectment for it soon after, and since dismissed the case. Sensenderfer closed.

John Montgomery, Jr., attorney for Swisher, testified that when Sensenderfer sued Swisher for this land Swisher employed him and he wrote to General Land Office and got the letter, a copy of which is in evidence. Then got deed from Lampton to Swisher for the land in Sec. 33, and sued Foreman to protect Swisher. The statute was about to bar a suit. Swisher approved of his action. Afterward found that Sinnet had the Brice patent and dismissed the suit.

It was shown that both the officers at the Warsaw Land Office when Lampton made his entry are now dead.

The foregoing is not all the evidence, but is, we think, a fair abstract of it, and gives all that is material.

In due time after the finding and decree Sensenderfer filed a motion for new trial on ground that the court erred in admitting any evidence, and admitted improper evidence against Sensenderfer's objections, and excluded proper evidence offered by Sensenderfer.

And the finding was vs. the evidence and the weight of it, and unsupported by it. And was against law and equity, and should be for Sensenderfer. And the judgment exceeds the jurisdiction of the Court.

This motion was overruled. Sensenderfer duly excepting.

Also in due time Sensenderfer filed a motion in arrest of judgment on the ground that the Court had no jurisdiction in the case. And the petition does not state facts sufficient to constitute a cause of action. And upon the whole record the judgment is erroneous.

This was also overruled, Sensenderfer duly ex-

cepting. Sensenderfer filed a Bill of Exceptions and affidavit for appeal which was granted, to the Supreme Court of Missouri, where the finding and decree was affirmed. 84 Mo., p. 104. (See copy of Opinion Trans. Rec., pp. 51, 52.) Thereupon Sensenderfer brings the case to this Court on a Writ of Error.

Said entries by Lampton and Sensenderfer, as shown by the Land Office records is as follows:

32				33			
		W. Sensenderfer. Sept. 27, 1870.	M. M. Lampton, Nov. 16, 1855.	M. M. Lampton.	Nov. 16, 1855.	M. M. Lampton, with M. B. L. W., June 17, 1856.	
		M. M. L., Apr. 26, 1856	M. L. L., Apr. 22, 1856	M. M. L., Ap. 22, 1856	M. M. L., July 5, 1856		

Assignment of Errors.

To reverse the finding and the decree of the Circuit Court of Pettis County, Mo., and the judgment of the Supreme Court of Missouri affirming same, Plaintiff in Error, Sensenderfer, assigns and relies upon the following errors in the proceedings, manifest on the record:

I.

The Circuit Court of Pettis County was without jurisdiction to render the relief sought and prayed for by the petition or bill in equity of the Defendant in Error, Swisher, to-wit: the correction of the alleged errors and mistakes by the officers and agents of the United States in matters preliminary to the sale of the public domain.

II.

There was no equity in the bill or petition in equity of the said Defendant in Error, Swisher.

III.

The finding and decree of the Circuit Court of Pettis County, Mo., was against the weight of evidence, and wholly unsupported by the evidence.

IV.

The finding and decree, under the pleadings and the evidence, should have been for the Plaintiff in Error instead of the Defendant in Error, being wholly unsupported by the evidence.

V.

That the Circuit Court of Pettis County, Mo., admitted incompetent, irrelevant, and immaterial testimony on behalf of Defendant in Error, Swisher, on the trial of this cause.

VI.

That the Circuit Court of Pettis County, Mo., erred in refusing to sustain Plaintiff in Error's motion for a new trial and in arrest of the finding and decree.

VII.

That the Supreme Court of the State of Missouri erred in not reversing the decree of the Court of Pettis County, Mo., on account of errors above enumerated.

VIII.

That parole testimony was improperly admitted to establish the contents of the patent certificate alleged to have been issued to M. M. Lampton, no sufficient foundation having been laid for its admission, by proof of its loss or destruction.

IX.

The testimony offered and admitted on behalf of Defendant was insufficient to establish the facts charged in the Bill in Equity, and was competent for that purpose.

X.

The Circuit Court erred in admitting in evidence the Plat Book on file in the office of the Recorder of Deeds of Pettis County, to contradict the original application of Lampton, on file in the land department at Washington: (1.) Because it did not purport to be a copy of any record in the Warsaw, Mo., land office. (2.) It was not properly certified. (3.) No loss or destruction of the Patent Certificate of Lampton had been established, to admit secondary evidence of its contents. (4.) Because the original application of Lampton must control as to what he intended to enter and did enter.

XI.

The Circuit Court erred in overruling the objection *ore tenis* at the trial to the introduction of any testimony under the petition, because it stated no cause of action.

BRIEF OF PLAINTIFF IN ERROR.

I.

The whole subject matter of this suit is within the appellate jurisdiction of this Court. Its decision involves a "Federal Question."

Rev. Stat. U. S., Sec. 709, (Ed. 1878.)
Murray vs. Charleston, 6 Otto, 432.
Beer Company vs. Massachusetts, 7, Ibid, 25.

II.

The equity relied upon by Defendants is predicated of an alleged mistake by the officers of the local land office in matters preliminary to the entry or location and anterior to the issue of the patent. For such errors there was provided by statute an ample, effective, adequate, and exclusive remedy.

Rev. Stat. U. S., Secs. 2369, 2370, 2371, (Ed. 1878.)

III.

Equity never contravenes the law; and when there is a complete remedy at law, a Bill in Equity must be dismissed; this question is jurisdictional and may be raised for the first time in the Appellate Court.

Oelrichs vs. Williams, 15 Wall, 211.
Wright vs. Ellison, 1 Wall, 161.
Sullivan vs. Portland & K. R. R. Co., 94 U. S., 806.

IV.

When officers of the land department decide, as in this case, controverted questions of fact, in the absence of fraud or mistake, their decisions on these questions are final except as they may be reversed on appeal in that department.

Johnson v. Towsley, 13 Wall., 73-91.

Wilcox v. Jackson, 13 Peters, 511.

Lytle v. Arkansas, 9 How., 333; Shepley v. Cowan, 91 U. S., 330-340.

V.

The decisions of the officers of the land department in the exercise of their functions was final in this case, and Courts cannot properly interfere unless they have misconstrued the law of the case, or there was misrepresentation or fraud practiced, necessarily affecting their judgment, and then only *in a proper proceeding.*

Quinby v. Conlan, 104 U. S., 420.

Steel v. The St. Louis Smelting and Refining Co., 106 U. S., 96.

VI.

The Circuit Court of Pettis County, Missouri, transcended its jurisdiction when it essayed, in a suit between private parties, to review, annul, and set aside the solemn decision of the land department of the Federal Government on a question of fact.

Quinby v. Conlan, 104 U. S., 420.

Shepley v. Cowan, 91 U. S., 330-340.

Moore v. Robbins, 90 Ibid, 530.

Marquez v. Frisbie, 101 U. S., 473-479.

VII.

The assignment of errors should be sustained. The plat book on file in the Recorder's office of Pettis County, (folio 77, pp. 30, 31, Rec.), Mo., was inadmiss-

ible for any purpose, not being a copy nor purporting to be such of any record on file in the Warsaw office; if so, it was incompetent to contradict the original document on file in the general land office produced in court by means of exemplified copies.

(a) It was made up for the purpose of taxation.

Sec. 36, page 1332, Rev. Stat. Mo. 1855, Vol. II.
United States vs. Wood, 14 Pet., 430
Taylor vs. Riggs, I Pet., 591.
DeLane vs. Moore, 14 How., 253.

The admission of the certificate made by Marvin, Register of the Clinton Land Office, to the State Register of Lands, was of a piece with the above, and was erroneous.

VIII.

No foundation was properly laid by proving the loss of the patent certificate alleged to have been issued to M. M. Lampton to admit secondary evidence of its contents.

United States vs. Reyburn, 6 Pet., 352.

(a) In the absence of the certificate, the next best evidence was the written application of Lampton on file with the land department.

Blackburn vs. Crawford, 3 Wall, 175.

IX.

The whole evidence of the Defendant in Error was insufficient to overcome the record evidence of the land department of the United States, and in similar cases to this the Supreme Court of Missouri theretofore uniformly held it sufficient, reversing the findings and decisions of the trial courts in the following cases, which are on all fours with this to-wit:

Sensenderfer vs. Neale, 66 Mo., 660.
Sensenderfer vs. Smith, 66 Mo., 80.
Widdecomb vs. Mercer, 72 Mo., 583.

(*a*) But that court passes these cases *sub silentio, et cum oculo averto.*

In the first of the cases supra, the court uses this language: "The Parol testimony tended to show that "Neale had located his warrants upon the land in "controversy, but it was not strong enough, nor can "we conceive of Parol evidence that would be suffi- "cient to overcome the record evidence and the De- "fendant's own written application and affidavit to "locate the very land for which the patent was issued "to him."

X.

The patent from the United States to Lampton, (folios 89, 90, p. 37, Trans. Rec.) date April 1, 1859, for the west half of northeast quarter Sec. 33, Twp. 44, R. 23, though it may never have been delivered, had the effect to vest the legal title in him to said tract.

Opinions of the Att'y Gen., Vol. 7, Part 2, pp. 1404, 1405.

United States v. Schurz, 102; U. S. 389, (loc. cit. 397).

XI.

The act of Lampton in conveying the tract described in Prop. X supra, to Defendant in Error, Swisher, and his accepting the deed and placing same upon the record, and the institution of the suit in ejectment against Foreman, the occupant, being done with full knowledge of all the facts, was a complete ratification and acceptance of the patent; besides it betrayed a consciousness that he had no right, title, or interest in the tract in controversy now set up and decreed to him. (See Cross-examination Lampton, folio 51, p. 21. Cross-examination Swisher, folio 37, p. 16, and letter to Montgomery, Swisher's lawyer, folios 96 and 97, p. 40, Trans. Rec.)

Drakeley v. Gregg, 8 Wall, 242.
Smith v. Morse, 9 Ibid, 76.
Marsh v. Fultan Co., 10 Ibid, 676.

XII.

Sensenderfer was not bound to take notice of the record of deeds from M. M. Lampton, but only from those under whom he claimed, and was not affected with notice of the deeds relied on by Defendant.

Maude vs. Rider, 59 Pa. St., 167.
Lasey vs. Simpson, 3 Stock. (N. J.)
Bates vs. Norcross, 14 Pick. 224.
Crocket vs. MaGuire, 10 Mo. 34.
Mo. Camant vs. Patterson, 39 Mo. 100.
74 Mo., 317, 44 Ibid, 564.
55 Ibid, 23, 46 Ibid 239.

XIII.

Neither the *allegations of the bill, nor the evidence*, bring this case within the recognized equitable doctrine, that when a party, by misrepresentation or fraud, imposes upon the officers of the land department and his improper conduct has caused the wrongful issuance to a person not entitled to it, of a patent, after such title has passed from the government, a court of equity ought in a suit between such patentee, and the one rightfully entitled to it, divest the legal title so acquired and invest it in the one having the paramount right, and so it has been held by this Court in the following cases:

Lytle vs. State of Arkansas, 9 How., 328.
Cunningham vs. Ashley, 14 How., 377.
Bernard vs. Ashley, 18 How., 44.
Lytle vs. Arkansas, 22 How., 103.

XIV.

Sensenderfer was a purchaser for value without notice, knowledge, or information of the pretended

equitable claim of Swisher and those through whom he claims and as such purchaser is entitled to be protected. There is not a scintilla of evidence to support the finding of the Court that he was a purchaser with notice.

Townsend vs. Little, 109 U. S., 504.
Boone vs. Chiles, 10 Pet., 177.
Lea vs. Polk County, Cooper Co. 21 How., 493.

XV.

Swisher's claim to equitable relief was barred by the Statute of Limitations of ten years. This proceeding was not commenced until after *twenty* years. This issue was raised by the answer.

II Story's Eq. Juris., sec. 1520.
Richards vs. Watkins, 56 Mo., 553.
Zoll vs. Carnahan, 83 *ibid*, 35.
Rogers vs. Brown, 61 *ibid*, 187.
Ware vs. Galveston City, 111 U. S., 170.

The bill shows upon its face that the Complainant was guilty of laches, his claim is stale, and the motion in arrest should have been sustained.

XVI.

Continuous occupation of the tract under color of title and claim of right coupled with the payment of taxes by those claiming after and under William R. Kemp, constitutes no defense, legal or equitable, to Plaintiff's patent, as the legal title remained in the United States until April 20, 1871, when it became vested by patent in Sensenderfer.

United States v. Thompson, 98 U. S., 486.
Oaksmith v. Johnson, 92 Ibid, 348.

(*a*) Nor did possession and payment of taxes tend to establish the gist and gravamen of the bill that M. M. Lampton became the equitable owner of the tract.

XVII.

This Court having appellate jurisdiction of the case by reason of the *Federal Question* involved, it becomes its duty to determine every question raised by the Assignment of Errors.

This case, in all its essential features, is identical with the case of Sensenderfer v. Kemp et al., No. 280, present term of this Court.

Respectfully submitted,

LEVIN H. CAMPBELL,
SAMUEL P. SPARKS,
Attorneys for Plaintiff in Error.

IN THE

SUPREME COURT

OF THE UNITED STATES.

WILLIAM SENSENDERFER, P. E.,
vs.
SAMUEL SWISHER, D. E.

No. 281.

Error to the Supreme Court of Missouri.

PLAINTIFF IN ERROR'S ABSTRACT OF THE RECORD, Assignment of Errors and Brief.

LEVIN H. CAMPBELL.
SAMUEL P. SPARKS.
Attorneys for Plaintiff in Error.

Spencer & McDonald, Printers, Warrensburg, Mo.

IN THE

SUPREME COURT

OF THE UNITED STATES.

WILLIAM SENSENDERFER, P. E.,
vs.
SAMUEL SWISHER, D. E.

No. 281.

Error to the Supreme Court of Missouri.

On the fourteenth day of August, 1873, the Plaintiff in Error, Sensenderfer, began his suit in the Circuit Court of Pettis County, Missouri, against the Defendent in Error, Swisher, in ejectment, for possession of West half of Northeast quarter Sec. 32, Twp. 44, Range 23, in said Pettis County. Afterward the case was removed to the United States Circuit Court. In that Court Defendent in Error herein filed, May 1, 1878, his cross bill in equity, on which this case was finally tried. After filing said bill the two cases were by consent removed to the Pettis Circuit Court, where issue was joined and trial had on said cross bill as an original bill in equity.

Said bill alleges that M. M. Lampton, by virtue of Military bounty Land Warrant, No. 26,384, issued

under act of Congress of March, 1855, located and entered said land, and the same was evidenced by entry on the plat book and record in the District Land Office, and that a duplicate certificate was duly issued to Lampton, evidencing that fact. That Lampton took and held possession of, and paid taxes on it as his own till October 11, 1860, when he sold and conveyed it to Geo. Mansur. That he took and held possession and paid taxes till October 11, 1865, when he sold and conveyed it to Swisher. That he took and held and paid taxes on it to filing of the bill. That all said deeds were duly recorded. That Swisher and his predecessors in said title made lasting and valuable improvements on the lands, and paid the purchase money in good faith. That Sensenderfer, with full notice of all this, and to cheat and defraud Swisher, procured and obtained a patent from the United States, conveying said land to him, and sets up claim to the same by virtue of the patent. That Lampton and the others had never got a patent to the land under Lampton's entry.

The prayer is for injunction as to the ejectment suit till the trial of this, and that the title be divested out of Defendant and vested in Plaintiff and for all proper relief.

An amended answer filed in the State Court after this cause came there admits Plaintiff has the patent from United States, and claims under it and admits Swisher's possession, and otherwise is a general denial. It also says instead of Lampton entering the land in dispute with said Land Warrant, that on June 17, 1856, at the Land Office at Warsaw, he duly made application to locate said Warrant on and enter the West half of the Northeast quarter of Sec. 33, Twp. 44, Range 23, and did locate the same on and enter said last named land, and the same was duly entered

on the records and reported to all proper offices and officers, and that was the land and the only land embraced in said duplicate receipt; that April 1, 1859, the same was conveyed to him by patent. That the land in dispute was vacant and appeared so on the books of the General Land Office, and the local one at Boonville, and it was there subject to entry, and relying on those facts, Defendant, in good faith, Sept. 27, 1870, entered said land at the Boonville Land Office, and bought it for cash, then paid the United States. And without knowledge or notice of claim or anybody adverse to the United States. And on January 10, 1871, there was duly issued and delivered to him a patent for it, and it would be inequitable to deprive him of it.

Answer further says, if there was any error by Lampton or the officers of the Land Department, there was all the while ample means under the acts of Congress to correct it, and it can only be corrected as thus provided, and not by this Court, and this Court has no jurisdiction herein. Also, that now, after more than twenty years and the intervention of Plaintiff in Error's rights, equity will give no relief. Also pleads the action is barred by the 10 years statute of limitations and the twenty years limitation. And prays to recover judgment; that Plaintiff has no title or claim, and for possession and rents, &c. The answer also has a count as a petition in ejectment, alleging title and rights of possession February 28, 1871, and ouster by Swisher March 1, 1871, and unlawful withholding to his damage $1,000, and the nonthly rents are $25, and prays judgment as in ejectment.

The reply was a general denial.

A trial was had before the Court in Chancery and the.....judgment finds that June 17, 1856, M. M. Lampton entered the land in dispute with said War-

rant No. 26,384, at Warsaw office, and received a certificate evidencing that fact, and the same was duly entered on the books of the office. Finds the chain of title as in the petition, and that parties holding the same made lasting and valuable improvements and paid taxes till 1871. That Sensenderfer procured the patent to him for the land and recorded it in Pettis County. That Swisher was the equitable owner, and Sensenderfer made entry and got his patent with full notice.

The decree divests Sensenderfer of the legal title and vests it in Plaintiff and gives judgment for Plaintiff for costs.

THE EVIDENCE.

From Bill of Exceptions it appears that when Swisher offered evidence Sensenderfer objected because the petition does not state facts sufficient to constitute a cause of action in that the Court cannot correct any error of the officers of the United States government, except when said officers made a mistake in matter of law, and where a patent has been obtained by actual fraud, and because the fraud is not sufficiently set out. The exception was overruled and Sensenderfer duly excepted.

Swisher himself testified that he bought the land in dispute from Mansur, in October, 1865, and held it ever since. The south half was fenced and in cultivation, and he fenced and broke the north half the next spring. He bought 500 acres with this 80, and the house was 100 yards east of the south 40 of this. In 1870 there was hedge fence on three sides and across the middle of this land. When he bought of Mansur, M. and his wife had parted and M. boarded with witness two or three months, and they then settled up, and witness got his deed in Sedalia and never saw M. after. Had written to his people in Ohio to

find him. Witness never got any title papers but his deed from M. When Mansur went away he left his trunk at witness' house and never sent for it. After about three months witness opened it and found there had been considerable papers in it, with writing on them, but the mice had eaten them so they could not be made out except that one was an account book. Witness knew of no defect in the title when he bought. Witness first saw Sensenderfer in 1872, when he came to witness' house and told him he had eighty acres of witness' land. Sensenderfer seemed to want to sell to Swisher, but did not put a price on it then. At a subsequent time Sensenderfer told Swisher he would take $25 per acre. Swisher of told him to keep the land. When Sensenderfer first came he did not know where it was. Witness asked Sensenderfer why he did not enter raw land. He said he would not pay taxes on raw land for it. That he had been broke up in merchandising in St. Louis, and took this way to get a piece of land. That he had been in the Boonville Land Office hunting up mistakes in entries.

Swisher read deed from Mansur to himself of date October, 1865.

On cross-examination witness said when he bought he got no abstract of title and does not know that he inquired as to the title of Mansur or any one. Never looked at the plat of entries in Recorder's office then, nor got any one to. When Sensenderfer first came to my house I had just got up from a bed of sickness. That Sensenderfer told him that Lampton had entered land in Sec. 33. That after that his attorney in this case got a deed from Lampton to the land in Sec. 33, and brought suit vs. one Foreman for it and finally dismissed it. That witness knew about all this, but did not direct it. Left that to his attorney.

R. D. Means said he lived in Pettis County since 1832, and entered a good deal of land at the Warsaw office, for others, and 600 or 700 acres for himself; in all 2,000 or 3,000 acres. Lived one and one-half miles from this land in 1855–6. Witness helped carry flag in some of the government surveys and after in 1830-odd, helped survey this land. When land was entered at Land Office they wrote the entryman's name across it on the plat. Witness had looked to see if all the land in that neighborhood was entered while office was at Warsaw, and found it was. Witness first met Lampton in the fall of 1855, took him out and showed him vacant land in witness' neighborhood. Witness and Lampton went to Warsaw and Lampton entered Northwest quarter of Sec. 33, and East half of Northeast quarter Sec. 32. That Lampton went back to Kentucky and returned in the spring of 1856, and entered other lands including a forty south of this in dispute. That Lampton wanted this and thought he had it surrounded so no one could take it. He recollects Lampton also entering the Northeast one-quarter of Southwest quarter of Sec. 33, he thinks his last entry. That finally one Smoote came in there and said he had entered this in dispute. Lampton and witness then went to Warsaw and found it was not entered, and Lampton then entered it, and got a certificate to that effect. Lampton then got J. W. Williams, surveyor of Henry County, to survey his land, and he did so from the certificate, witness carrying the chain. He surveyed Lampton's whole tract from the papers. Lampton built a house and his garden ran near to, but not onto, this land. Lampton boasted his land lay like a book. Six forties in each Section, was a mile one way and three-fourths the other. Thinks he fenced part of it near the house. Then sold to Mansur. Never saw the certificate since that survey. Says when Lampton went to enter this land

he had Gold, and Marvin, register of the Land Office, offered to sell him a Land Warrant and he paid Marvin the money, and M. said he would use the warrant. That he thinks Lampton signed application in blank and Marvin said he would fill it up. That he is not certain whether the application was filled up or not when Lampton signed it. He says he cannot be mistaken as to the certificate describing this land. Lampton put out orchard but not on this in dispute. Thinks he fenced some of this in dispute in 1857. Williams' survey of this was in 1856. There is water on West half of Northeast quarter of Sec. 33, but does not recollect hearing Lampton say he thought of entering it for the water. Lampton already had water on Northwest quarter of Sec. 33. There is no water on West half of Northeast quarter of Sec. 32. Mansur made no improvements on the land in dispute.

M. M. Lampton testified that in fall of 1855 he entered 240 acres of land in Secs. 32 and 33, Twp. 44, Range 23, but cannot describe it. It lay together, longest north and south. Afterward entered some more. Does not know how it lay, only some of it was south of the first entry. Means was with him when he made his entries. What he entered in spring of 1856 was some north and some south of his house. Entered the eighty in controversy, in June, 1856. Smoote came in and went to Warsaw, and thought he had entered it. Witness and Means went to Warsaw, and found he had not. Witness then entered it, paying gold. But there was some talk about a Land Warrant. Witness signed a blank application and gave it to Marvin, register, and depended on him to fill it up, as Marvin had been recommended, and he said he would fill it up all right. He gave witness a certificate for the land in dispute. Smoote had entered a forty witness wanted, and Marvin said he thought Smoote would cancel his entry, as it was not

where he wanted it, and if so, witness could have it. The next month witness went and entered the other forty and that was the last. This put his land three-fourths of a mile north and south and one mile east and west. That Williams, surveyor of Henry County, surveyed all his land, including this, from the certificates of entry. He began his house before the entry of this in dispute. His house was 75 or 100 yards from this, and thinks he fenced part of this near the house. Witness occupied this whole tract till 1859, when he sold it all to Mansur, and M. went into possession. Mansur gave him a mortgage for balance of purchase money. Witness gave Mansur his certificate of entry. The deed to Mansur was drawn from the certificates. When M. sold to Swisher they paid witness and he satisfied the mortgage. Never got patents to any of his lands. He paid taxes on this while he had it. Saw Sensenderfer and talked to him about his entry. Did not tell him it seemed almost impossible that he should have made a mistake, nor that it must have been a mistake on his part, nor anything of that kind. Says the paper he signed at Warsaw was a printed blank. Thinks it was the Land Warrant. Knows John Montgomery, attorney in this case; corresponded with General Land Office about this matter. And after that witness talked to Sensenderfer, but did not tell him he (witness) had made a mistake.

After this trouble got up witness made a quit claim deed to Swisher for west half of northeast quarter of Sec. 33, because Swisher agreed to not hold him on his warranty if he would. Says he knows he wanted to enter the land in dispute, and that he did not want that in Sec. 33, and he never claimed it and did not intend to enter it. That what he signed in blank at the Land Office was the application, and Marvin said he would fill it up and fix it all right.

Tom O'Gary testified that in 1871 or '72 he took Sensenderfer from Windsor, Mo., to the house of one Neill, and on the way back Sensenderfer told him his business was to hunt up mistakes in land entries and enter the land. Witness asked if he found a poor man with land by a mistaken entry, if he would take it from him. Sensenderfer said he would be easy on such and let him have it cheap. Witness asked him why he did not enter raw lands, and he said he would not pay taxes on it for it. That he wanted improved lands of rich men, and he would make them pay well for it.

It was shown that the Warsaw Land Office was burned in the fall of 1861, and that the business of it was transferred to the Boonville Land Office, and that the books in the latter office, showing the entries at Warsaw, are copied from the books in the General Land Office at Washington, made up from the reports and original papers sent up from the Warsaw office. It was shown by deposition of Gustave Richie, register of said Boonville office, that as shown by said books in that office, M. M. Lampton, on November 16, 1855, entered at Warsaw the east half of northeast quarter of Sec. 32, and northeast quarter of Sec. 33, for cash. And on April 26, 1856, he entered north half of southeast quarter of Sec. 32, and the northwest quarter of southwest quarter of Sec. 33, for cash. And on July 5th, 1856, he entered the northeast quarter of southwest quarter of Sec. 33, for cash. And on June 17, 1856, he entered west half of northwest quarter of Sec. *thirty-three*, with Military Bounty Land Warrant, No. 26,384. And that November 21, 1856, B. W. Brice entered east half of northeast quarter of Sec. 33, with such warrant. No. 201. And that Defendant, Wm. Sensenderfer, September 27, 1870, entered at Boonville the west half of northeast quarter of Sec. 32, for cash. This witness also identified

and furnished a copy of a letter from Commissioner of General Land Office, of November 15, 1872, to Register at Boonville, saying that the entry by Brice of west half of northeast quarter of Sec. 33 was in conflict with Lampton's prior entry of the same, and the patent to Brice inadvertently issued, and was sent to Hon. Owen Lovejoy, M. C., and directing to inform Brice that on his relinquishment of patent his Land Warrant would be returned, and he could re-locate it.

Deposition of J. N. Gott, formerly Receiver in Boonville office, said, from spring of 1870 during that year Sensenderfer was engaged in looking up lands as shown by the records in that office to be vacant, with a view to entering them. That he checked off on plats that entered, and the other was supposed to be vacant, and from that made his entries. The entries on the tract book certified from Washington were not always correct, and Sensenderfer found that out while there, but did not say at what time. Sensenderfer made entries north and south of Missouri river. He heard him say that after entry he went to see the lands and found some of them occupied and claimed. Also said he corresponded with an attorney in Washington after he found there were adverse claims. That any one who can read writing can tell from those books what land is vacant, and Sensenderfer pursued the same course as others desiring to enter lands at that office. That the books in that office are open to the inspection of all the lands not marked entered are regarded as vacant and subject to entry, and such are the instructions from Washington. That it had been supposed all lands in Pettis County were entered, but close inspection showed some vacant.

Swisher put in evidence a patent from United States to B. W. Brice, of date November 10, 1859, to the west half of northeast quarter of Section 33, Twp. 44, Range 23, under the Brice entry aforesaid. To

this Sensenderfer objected, because irrelevant and because of the prior entry of the same by Lampton, and because before the issue of said patent, the same land had been patented to Lampton, as shown later in the Bill of Exception. Objection was overuled and Defendant duly excepted.

Swisher offered a plat of Pettis County, with the following certificate to it: "I, Mark L. Means, Register of the Land office at Warsaw, Missouri, do certify that this and the accompanying Township plats embrace all the territory in Pettis County, Missouri, with the names of the original purchasers endorsed on each tract purchased at said Land Office, as appears by the original plat books and records at said office, and the said plats are correctly transcribed with endorsements thereon.

Given under my hand this 1st day of July, 1858.

M. L. MEANS, Register.

It was admitted that Means was then Register and made the certificate, and the map or plats has since been in the proper office in Pettis County. Defendant, Sensenderfer objected to the plat or map because not certified as required, and because it does not purport to be a copy of any record, memoranda or paper in the Land Office, and because it is not made as required by the law under which it was procured in that the number of acres and number of survey is not given. The objection was overruled and Sensenderfer duly excepted.

Said plat has on it simply the names of those who purport to have entered the different tracts of land marked on said tracts. But without date or number of acres or No. of survey. Swisher put in evidence the entries marked on Secs 32 and 33, Twp. 44, Range 23, on which Lampton is marked as having entered northeast quarter and north half of southeast quarter of Section 32, and northwest quarter and

north half of southwest quarter of Sec. 33. And B. W. Brice the northeast quarter of Sec. 33. Swisher put in evidence a mortgage from Lampton to J. H. Caldwell, dated and recorded January, 1858, conveying this land in dispute. Also a Deed of Trust from Lampton to R. Allen for Bushnill & Tutt, covering this land, dated December, 1858, and recorded January, 1859. Also Warranty Deed from Lampton to Mansur, dated and recorded October, 1860, and a mortgage from Mansur to Lampton of same date and record. Also a Warranty Deed from Mansur to Swisher, dated October, 1865, and recorded January, 1866. To all of which Sensenderfer objected, because irrelevant and not in the chain of title of Sensenderfer, or from any one in said chain, and not deeds the record of which imparts any notice to Sensenderfer. The objection being overruled, Sensenderfer duly excepted.

Swisher showed by certified copy of reports of the register of the Warsaw Land Office, made to the Register of Lands of Missouri, that on December, '56, A. C. Marvin, register, reported to that office that Lampton had entered the west half of northeast quarter of Sec. 32. And November 15, 1857, M. L. Means, register, reported that B. W. Brice entered west half of northeast quarter of Sec. 33.

It was shown that in 1857 this land was assessed to Lampton. From '57 to '60 no tax book can be found; for 1861-2-3 it is assessed to Mansur. Is not assessed for '65. For '66 cannot find tax book. For 1867-8 to Lampton. From 1869 it is assessed to Swisher. The books show these taxes all paid.

It was shown by mesne conveyances duly recorded, that the interest of Brice in west half of northeast quarter of Sec. 33, passed to one Foreman in 1868, and he took possession and is still holding it. All this subject to the same objection of Sensenderfer

as urged to the deeds under Lampton, Sensenderfer saving the point by exception.

Means recalled and said he kept a plat of that township till the land was all entered, and from that the books at Warsaw office and what the officers there told him he knew the land in that township was all entered before 1869-70. Swisher closed.

Sensenderfer put in evidence his patent from the United States of January 10, 1871, to the land in dispute. Also an exemplification of the record in the General Land Office of a patent from United States to M. M. Lampton, of date April 1, 1859, conveying the west half of northeast quarter of Section 33, showing it had been entered by said warrant No. 26,384, Sensenderfer put in evidence a certified copy of Lampton's application to enter as follows:

"Military Bounty Land Act of March 3, 1855,
"Land Warrant No. 26,384, register and receiver No.
"441.

LAND OFFICE, WARSAW, MISSOURI, June 17, 1856.

"We hereby certify that the attached Military
"Bounty Land Warrant No. 26,384 was on this day
"received at this office from Mitchell M. Lampton, of
"Pettis County, Missouri."

A. C. MARVIN, Register,
N. B. HOLDEN, Receiver.

"I, Mitchell M. Lampton, of Pettis County, State of
"Missouri, hereby apply to locate, and do locate, the
"west half of northeast quarter of Section No. 33, in
"Township 44, of Range No. 23, in the district of
"lands subject to sale at the land office at Warsaw,
"Missouri, containing 80 acres, in satisfaction of the
"attached Warrant No. 26,384, issued under the act
"of March 3, 1855.

MITCHEL M. LAMPTON.

Attest: A. C. MARVIN, Register,
N. B. HOLDEN, Receiver.

LAND OFEICE, WARSAW, MISSOURI, June 17, 1856.

"We hereby certify that the above location is "correct, being in accordance with law and instruc- "tions. N. B. HOLDEN, Receiver,
A. C. MARVIN, Register.

Sensenderfer read a certified copy of the record in the general land office of a letter from the Commissioner of the General Land Office to the Register of the Land Office at Plattsburg, Mo., dated March 22, 1855, from which we take the following:

"You also appear to be laboring under a misap- "prehension in supposing the application of a pur- "chaser to be a mere matter of form. Such is not "the fact. By the act of Congress, approved Feb. 24, "1810, every person making application at any of the "Land Offices of the United States for the purchase, "at private sale, of a tract of land, is required to pro- "duce to the Register a memorandum in writing, de- "scribing the tract which he shall enter by the proper "number of section, half-section, or quarter-section, "(as the case may be), and of the Township and "Range, *subscribing his name thereto*, which memo- "randum the Register shall file and preserve in his "office. *Such written application forms the foundation "of every entry, and is made to govern in all cases* in de- "ciding the question as to what particular tract of "land was entered, and under no circumstances is it "admissible to alter in any manner the affidavit and "application of the purchaser. The filling up of the "application is no part of the official duty of the "Register or Receiver. If requested to do so you "may fill up the application, but when signed by the "applicant it becomes his own act, and he alone is re- "sponsible for any errors that may exist therein."

Sensenderfer put in evidence the copy of a letter from Commissioner of General Land Office, November 15, 1872, to John Montgomery, Jr., Attorney for

Swisher herein, in answer to one from him about this same matter, in which the Commissioner informs him that the records in the General Land Office show Lampton entered the land in Sec. 33 and not in Sec. 32, and it was patented to him, and says: "And hence this office cannot go beyond the written application of the party in determining as to the land embraced in his location." It also says Brice's entry is invalid and the office at Boonville would that day be directed to so inform Brice. This letter is the same date as the one received by the Boonville office above referred to, directing them to so inform Brice, &c.

Sensenderfer testified that in August, 1870, he settled his business in St. Louis and went to Boonville to live. Having heard of tracts of land being overlooked in making the entries, and left vacant, he went into the land office to see if he could find and enter any such. He found some and entered thirty or forty tracts, four of which he found occupied and claimed by others, and some ten conflicting entries; that is, had been entered before; and he got his entries cancelled. That he made all his entries, including this one, without seeing the land, and knew nothing of it only as shown by the books in the land office. Some months after this entry, in looking over the books he saw the double entry in Sec. 33. In September, 1871, he came to Sedalia for the first time, and accidentally met Lampton and told him he was looking after land he had entered. Gave the number of this to Lampton, and he said he had previously entered, and Swisher now owned and occupied it. Witness supposed then that he had. But he wrote to Washington and found otherwise. In October, 1872, went to see the land and then saw Swisher. He told Swisher of his conversation with Lampton, and that he had since informed himself and now was satisfied it was his (Sensenderfer's) land, and Lampton's entry

in Sec. 33, and that if Swisher would write to Washington he would find it so. Did not tell Swisher that he would not enter vacant land as stated by Swisher, nor that he broke up in St. Louis. Did not so break up. Did not tell him his business in Boonville was to find mistakes in entries. Told him he entered it blind. After witness got copy of letter from the Commissioner of the General Land. Office to Montgomery, witness talked to Lampton in Sedalia. Lampton said he did not see how he made that mistake, but it seemed he did make a mistake, referring to the entry. Witness denies saying what O'Gary says he did. On cross examination he said he was in the wholesale tobacco business in Quincy, Ill., till 1842, when he went to St. Louis, in the same line till the war, then till 1868 was settling up the business. They lost largely, but paid out in full and had some left. In 1867 to '70 he was doing some real estate business in the city with one Laforce. When he came to Boonville had $2,000 or $3,000 and some lands in Missouri, Nebraska, Kansas, and Colorado, which he had gotten while in mercantile business, taken in trade. Went into land office to look up vacant lands because he saw in a paper that a member of Congress from Iowa, while in Washington, found some land near Des Moines vacant, as shown there, and when he went home he saw it and it was not occupied. He then entered it and made a good thing of it, and witness thought he might do so. He found some 500,000 acres vacant in Missouri. When he found a piece appeared vacant there, and if otherwise it seemed satisfactory, he entered it. At first he did not so write. Wrote to Washington before he made this entry. When he saw the double entry in Sec. 33 he wrote his attorney in Washington to see to it as it might prove a conflict with his. He got word it did not, and after that got his patent. He knew Pettis joined Cooper

County and had a railroad through it. After he got his patent was told by A. C. Widdecomb he might find conflicts. He then went to see it. Says 480 acres of the land he did enter was of no value. Went to see his success in entering and did not enter any more. Had been through Pettis County once or twice to Kansas City before making entries. Witness knew of the burning of the Warsaw office, and the books in Boonville were copies, and that most of the land in Pettis County was entered long before, but thought these were overlooked tracts. Went to see the lands after he got his patents. Since this suit was begun Swisher offered him $5 an acre to compromise. Witness told him it was worth $25. Says he is sure he did not say what O'Gary says he did, because it would not be true if he did say it. Prior to Montgomery getting the letter from the Commissioner of the General Land Office, Lampton said he was sure he entered this in Section 32; after that he said he must have been mistaken.

Sendsenderfer read deposition of A. C. Clarke, who said he lived near this land in dispute, in 1856. That that summer he built a house on land adjoining and entered same that year, in April. In April, 1856, Lampton, with witness, R. D. Means, and one Ellis, and one Jones, viewed the west half of the northeast quarter of Sec. 33, and there was water on it and none on that in dispute. And Lampton spoke of entering that in Sec. 33, and said he liked it and it would make a good stock farm. Witness and Lampton were in the Land Office at Warsaw the next day and Lampton entered some land. Then after that, in May or June, Lampton and Means went to Warsaw again to enter some land. But does not know what Lampton entered either time. It was admitted that about 1873 Lampton conveyed by Quit-Claim the west half of the northeast quarter of Sec. 33 to Swisher and he sued

Foreman in ejectment for it soon after, and since dismissed the case. Sensenderfer closed.

John Montgomery, Jr., attorney for Swisher, testified that when Sensenderfer sued Swisher for this land Swisher employed him and he wrote to General Land Office and got the letter, a copy of which is in evidence. Then got deed from Lampton to Swisher for the land in Sec. 33, and sued Foreman to protect Swisher. The statute was about to bar a suit. Swisher approved of his action. Afterward found that Sinnet had the Brice patent and dismissed the suit.

It was shown that both the officers at the Warsaw Land Office when Lampton made his entry are now dead.

The foregoing is not all the evidence, but is, we think, a fair abstract of it, and gives all that is material.

In due time after the finding and decree Sensenderfer filed a motion for new trial on ground that the court erred in admitting any evidence, and admitted improper evidence against Sensenderfer's objections, and excluded proper evidence offered by Sensenderfer.

And the finding was vs. the evidence and the weight of it, and unsupported by it. And was against law and equity, and should be for Sensenderfer. And the judgment exceeds the jurisdiction of the Court.

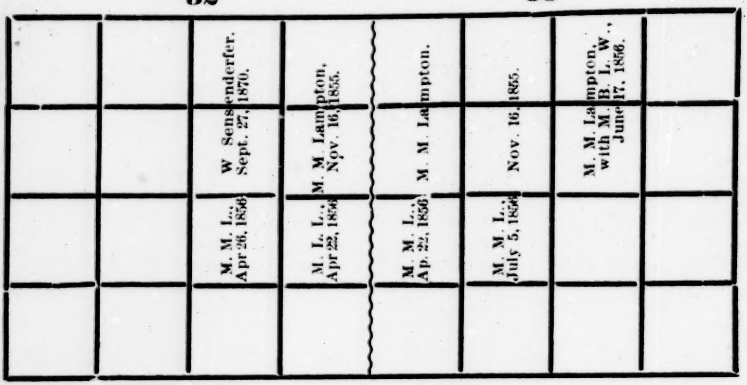
This motion was overruled. Sensenderfer duly excepting.

Also in due time Sensenderfer filed a motion in arrest of judgment on the ground that the Court had no jurisdiction in the case. And the petition does not state facts sufficient to constitute a cause of action. And upon the whole record the judgment is erroneous.

This was also overruled, Sensenderfer duly ex-

cepting. Sensenderfer filed a Bill of Exceptions and affidavit for appeal which was granted, to the Supreme Court of Missouri, where the finding and decree was affirmed. 84 Mo., p. 104. (See copy of Opinion Trans. Rec., pp. 51, 52.) Thereupon Sensenderfer brings the case to this Court on a Writ of Error.

Said entries by Lampton and Sensenderfer, as shown by the Land Office records is as follows:



Assignment of Errors.

To reverse the finding and the decree of the Circuit Court of Pettis County, Mo., and the judgment of the Supreme Court of Missouri affirming same, Plaintiff in Error, Sensenderfer, assigns and relies upon the following errors in the proceedings, manifest on the record:

I.

The Circuit Court of Pettis County was without jurisdiction to render the relief sought and prayed for by the petition or bill in equity of the Defendant in Error, Swisher, to-wit: the correction of the alleged errors and mistakes by the officers and agents of the United States in matters preliminary to the sale of the public domain.

II.

There was no equity in the bill or petition in equity of the said Defendant in Error, Swisher.

III.

The finding and decree of the Circuit Court of Pettis County, Mo., was against the weight of evidence, and wholly unsupported by the evidence.

IV.

The finding and decree, under the pleadings and the evidence, should have been for the Plaintiff in Error instead of the Defendant in Error, being wholly unsupported by the evidence.

V.

That the Circuit Court of Pettis County, Mo., admitted incompetent, irrelevant, and immaterial testimony on behalf of Defendant in Error, Swisher, on the trial of this cause.

VI.

That the Circuit Court of Pettis County, Mo., erred in refusing to sustain Plaintiff in Error's motion for a new trial and in arrest of the finding and decree.

VII.

That the Supreme Court of the State of Missouri erred in not reversing the decree of the Court of Pettis County, Mo., on account of errors above enumerated.

VIII.

That parole testimony was improperly admitted to establish the contents of the patent certificate alleged to have been issued to M. M. Lampton, no sufficient foundation having been laid for its admission, by proof of its loss or destruction.

IX.

The testimony offered and admitted on behalf of Defendant was insufficient to establish the facts charged in the Bill in Equity, and was competent for that purpose.

X.

The Circuit Court erred in admitting in evidence the Plat Book on file in the office of the Recorder of Deeds of Pettis County, to contradict the original application of Lampton, on file in the land department at Washington: (1.) Because it did not purport to be a copy of any record in the Warsaw, Mo., land office. (2.) It was not properly certified. (3.) No loss or destruction of the Patent Certificate of Lampton had been established, to admit secondary evidence of its contents. (4.) Because the original application of Lampton must control as to what he intended to enter and did enter.

XI.

The Circuit Court erred in overruling the objection *ore tenis* at the trial to the introduction of any testimony under the petition, because it stated no cause of action.

BRIEF OF PLAINTIFF IN ERROR.

I.

The whole subject matter of this suit is within the appellate jurisdiction of this Court. Its decision involves a "Federal Question."

Rev. Stat. U. S., Sec. 709, (Ed. 1878.)

Murray vs. Charleston, 6 Otto, 432.

Beer Company vs. Massachusetts, 7, Ibid, 25.

II.

The equity relied upon by Defendants is predicated of an alleged mistake by the officers of the local land office in matters preliminary to the entry or location and anterior to the issue of the patent. For such errors there was provided by statute an ample, effective, adequate, and exclusive remedy.

Rev. Stat. U. S., Secs. 2369, 2370, 2371, (Ed. 1878.)

III.

Equity never contravenes the law; and when there is a complete remedy at law, a Bill in Equity must be dismissed; this question is jurisdictional and may be raised for the first time in the Appellate Court.

Oelrichs vs. Williams, 15 Wall, 211.

Wright vs. Ellison, 1 Wall, 161.

Sullivan vs. Portland & K. R. R. Co., 94 U. S., 806.

IV.

When officers of the land department decide, as in this case, controverted questions of fact, in the absence of fraud or mistake, their decisions on these questions are final except as they may be reversed on appeal in that department.

Johnson v. Towsley, 13 Wall., 73-91.

Wilcox v. Jackson, 13 Peters, 511.

Lytle v. Arkansas, 9 How., 333: Shepley v. Cowan, 91 U. S., 330-340.

V.

The decisions of the officers of the land department in the exercise of their functions was final in this case, and Courts cannot properly interfere unless they have misconstrued the law of the case, or there was misrepresentation or fraud practiced, necessarily affecting their judgment, and then only *in a proper proceeding.*

Quinby v. Conlan, 104 U. S., 420.

Steel v. The St. Louis Smelting and Refining Co., 106 U. S., 96.

VI.

The Circuit Court of Pettis County, Missouri, transcended its jurisdiction when it essayed, in a suit between private parties, to review, annul, and set aside the solemn decision of the land department of the Federal Government on a question of fact.

Quinby v. Conlan, 104 U. S., 420.

Shepley v. Cowan, 91 U. S., 330-340.

Moore v. Robbins, 90 Ibid, 530.

Marquez v. Frisbie, 101 U. S., 473-479.

VII.

The assignment of errors should be sustained. The plat book on file in the Recorder's office of Pettis County, (folio 77, pp. 30, 31, Rec.), Mo., was inadmiss-

ible for any purpose, not being a copy nor purporting to be such of any record on file in the Warsaw office; if so, it was incompetent to contradict the original document on file in the general land office produced in court by means of exemplified copies.

(*a*) It was made up for the purpose of taxation.

Sec. 36, page 1332, Rev. Stat. Mo. 1855, Vol. II.
United States vs. Wood, 14 Pet., 430
Taylor vs. Riggs, I Pet., 591.
DeLane vs. Moore, 14 How., 253.

The admission of the certificate made by Marvin, Register of the Clinton Land Office, to the State Register of Lands, was of a piece with the above, and was erroneous.

VIII.

No foundation was properly laid by proving the loss of the patent certificate alleged to have been issued to M. M. Lampton to admit secondary evidence of its contents.

United States vs. Reyburn, 6 Pet., 352.

(*a*) In the absence of the certificate, the next best evidence was the written application of Lampton on file with the land department.

Blackburn vs. Crawford, 3 Wall, 175.

IX.

The whole evidence of the Defendant in Error was insufficient to overcome the record evidence of the land department of the United States, and in similar cases to this the Supreme Court of Missouri theretofore uniformly held it sufficient, reversing the findings and decisions of the trial courts in the following cases, which are on all fours with this to-wit:

Sensenderfer vs. Neale, 66 Mo., 660.
Sensenderfer vs. Smith, 66 Mo., 80.
Widdecomb vs. Mercer, 72 Mo., 583.

(*a*) But that court passes these cases *sub silentio, et cum oculo averto.*

In the first of the cases supra, the court uses this language: "The Parol testimony tended to show that "Neale had located his warrants upon the land in "controversy, but it was not strong enough, nor can "we conceive of Parol evidence that would be suffi- "cient to overcome the record evidence and the De- "fendant's own written application and affidavit to "locate the very land for which the patent was issued "to him."

X.

The patent from the United States to Lampton, (folios 89, 90, p. 37, Trans. Rec.) date April 1, 1859, for the west half of northeast quarter Sec. 33, Twp. 44, R. 23, though it may never have been delivered, had the effect to vest the legal title in him to said tract.

Opinions of the Att'y Gen., Vol. 7, Part 2, pp. 1404, 1405.

United States v. Schurz, 102; U. S. 389, (loc. cit. 397).

XI.

The act of Lampton in conveying the tract described in Prop. X supra, to Defendant in Error, Swisher, and his accepting the deed and placing same upon the record, and the institution of the suit in ejectment against Foreman, the occupant, being done with full knowledge of all the facts, was a complete ratification and acceptance of the patent; besides it betrayed a consciousness that he had no right, title, or interest in the tract in controversy now set up and decreed to him. (See Cross-examination Lampton, folio 51, p. 21. Cross-examination Swisher, folio 37, p. 16. and letter to Montgomery, Swisher's lawyer, folios 96 and 97, p. 40, Trans. Rec.)

Drakeley v. Gregg, 8 Wall, 242.
Smith v. Morse, 9 Ibid, 76.
Marsh v. Fultan Co., 10 Ibid, 676.

XII.

Sensenderfer was not bound to take notice of the record of deeds from M. M. Lampton, but only from those under whom he claimed, and was not affected with notice of the deeds relied on by Defendant.

Maude vs. Rider, 59 Pa. St., 167.
Lasey vs. Simpson, 3 Stock. (N. J.)
Bates vs. Norcross, 14 Pick. 224.
Crocket vs. MaGuire, 10 Mo. 34.
Mo. Camant vs. Patterson, 39 Mo. 100.
74 Mo., 317, 44 Ibid, 564.
55 Ibid, 23, 46 Ibid 239.

XIII.

Neither the *allegations of the bill, nor the evidence*, bring this case within the recognized equitable doctrine, that when a party, by misrepresentation or fraud, imposes upon the officers of the land department and his improper conduct has caused the wrongful issuance to a person not entitled to it, of a patent, after such title has passed from the government, a court of equity ought in a suit between such patentee, and the one rightfully entitled to it, divest the legal title so acquired and invest it in the one having the paramount right, and so it has been held by this Court in the following cases:

Lytle vs. State of Arkansas, 9 How., 328.
Cunningham vs. Ashley, 14 How., 377.
Bernard vs. Ashley, 18 How., 44.
Lytle vs. Arkansas, 22 How., 103.

XIV.

Sensenderfer was a purchaser for value without notice, knowledge, or information of the pretended

equitable claim of Swisher and those through whom he claims and as such purchaser is entitled to be protected. There is not a scintilla of evidence to support the finding of the Court that he was a purchaser with notice.

Townsend vs. Little, 109 U. S., 504.
Boone vs. Chiles, 10 Pet., 177.
Lea vs. Polk County, Cooper Co. 21 How., 493.

XV.

Swisher's claim to equitable relief was barred by the Statute of Limitations of ten years. This proceeding was not commenced until after *twenty* years. This issue was raised by the answer.

II Story's Eq. Juris., sec. 1520.
Richards vs. Watkins, 56 Mo., 553.
Zoll vs. Carnahan, 83 *ibid*, 35.
Rogers vs. Brown, 61 *ibid*, 187.
Ware vs. Galveston City, 111 U. S., 170.

The bill shows upon its face that the Complainant was guilty of laches, his claim is stale, and the motion in arrest should have been sustained.

XVI.

Continuous occupation of the tract under color of title and claim of right coupled with the payment of taxes by those claiming after and under William R. Kemp, constitutes no defense, legal or equitable, to Plaintiff's patent, as the legal title remained in the United States until April 20, 1871, when it became vested by patent in Sensenderfer.

United States v. Thompson, 98 U. S., 486.
Oaksmith v. Johnson, 92 Ibid, 348.

(*a*) Nor did possession and payment of taxes tend to establish the gist and gravamen of the bill that M. M. Lampton became the equitable owner of the tract.

XVII.

This Court having appellate jurisdiction of the case by reason of the *Federal Question* involved, it becomes its duty to determine every question raised by the Assignment of Errors.

This case, in all its essential features, is identical with the case of Sensenderfer v. Kemp et al., No. 280, present term of this Court.

Respectfully submitted,

LEVIN H. CAMPBELL,
SAMUEL P. SPARKS,
Attorneys for Plaintiff in Error.

Office Supreme Court U. S.
FILED.
APR 3 1890
JAMES H. McKENNEY,
CLERK

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1889.

No. 281.

WILLIAM SENSENDERFER, Plaintiff in Error,
vs.
SAMUEL SWISHER'S HEIRS.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MISSOURI.

Statement and Brief for Defendants in Error.

GEO. P. B. JACKSON,
FOR DEFENDANTS IN ERROR.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1889.

No. 281.

WILLIAM SENSENDERFER, Plaintiff in Error,

vs.

SAMUEL SWISHER'S HEIRS.

In Error to the Supreme Court of the State of Missouri.

STATEMENT OF THE CASE.

The plaintiff in error brought an action of ejectment in the Pettis Circuit Court against Swisher, to recover the west half of the northeast quarter of section 32, township 44, range 23, in Pettis county, Mo.

The case was removed to the U. S. Circuit court, where Swisher, in conformity with the practice, filed his cross bill, that he might assert an equitable title to the land.

The equities set up were, that one Lampton had entered the land in 1856, and received a certificate from the land of-

fice, evidencing that fact; that, through the mistake of the local officers, the matter was improperly certified to the General Land Office; that Lampton immediately took possession of the land and fenced part of it; that he sold it to one Mansur, who took possession and enclosed the whole of it, and in 1865, sold it to Swisher, who has, ever since, been in actual possession; that there had been a continued actual possession ever since Lampton's entry, and that taxes had been regularly paid all the time; that plaintiff in error, with full notice of these facts, and of Swisher's rights, and for the purpose of defrauding him, had procured a patent to said land.

Afterwards, upon stipulation, the case was remanded to the Pettis Circuit Court, to be tried on the pleadings and issues, as then made. Upon a trial in that court, evidence was adduced, fully sustaining the allegations of the cross-bill.

The court found the issues for Swisher, and decreed the legal title to him.

The plaintiff in error appealed the case to the Supreme Court of Missouri, which affirmed the decree, and the plaintiff in error now brings the case to this court.

Much of the evidence in this case was the same as that in the case of Sensenderfer vs. Kemp, No. 280, on the docket of this court, we therefore only mention in detail that portion of the evidence peculiar to this case.

On the trial of the cross bill, Swisher, as the plaintiff therein, introduced evidence as follows:

The plaintiff SWISHER, being sworn as a witness, the defendant objected to the introduction of any evidence because the petition (cross-bill) did not state facts sufficient to constitute a cause of action, and because the Pettis Circuit Court, could not entertain a case to correct any error of the

officers of the government, except only where the said officers have made a mistake in a question of law, and where a patent has been obtained by actual fraud. The objection being overruled, the witness testified:

That he bought the land in controversy from George Mansur, in October, 1865; never had any of the original deeds, except the one to himself. He took posession in 1865 and had occupied it ever since continuously; this was part of a larger farm; the S. ½ of the 80 in dispute was under fence and in cultivation when witness bought; he fenced the balance the next spring and it has been in cultivation ever since. The house on this farm was 100 yards east of this 80, the orchard came to the line of this 80 and was enclosed with the same fence. Witness had lived on this farm ever since he bought it. Part of the 80 was enclosed in 1870 with a hedge large enough to turn stock, and there was also a cross hedge on it. Mansur was living on the place when witness bought it. After a few months Mansur left and witness has never been able to find him, although he afterwards endeavored to do so. Witness had never seen Mansur's title papers; Mansur left his trunk at witness' house and never sent for it. The trunk was finally opened and a large amount of scraps of paper was found so badly eaten by mice that nothing could be made out of them. Witness knew of a mortgage on this land from Mansur to Lampton, he had paid off about $1,500 of it. Witness first saw Sensenderfer in the summer or fall of 1872; he came to witness' house and told witness that he had 80 acres of witness' land; he told witness all about how he had entered it, but witness could not recollect how it was done; he wanted to sell it to witness for $25 per acre; he showed witness the numbers and witness then pointed out the land; witness asked him why he put people to so much trouble by enter-

ing their improved land, and why he did not enter wild land, he said he would not have that; would not pay the taxes on raw land for it; that he had been broken up twice in St. Louis and took this way to get a piece of land; that he had been at the land office at Boonville, looking up mistakes made in land entries; this land is a mile and a half from the M., K. & T. Railway, and three miles from Windsor, which was not very large, but an old town and trading place. The land that witness bought from Mansur was all that included in the Lampton entries as they appear on the certified plat. Witness did not know of any unentered land at that time in that section of the country; Sensenderfer said he had entered 80 acres or had 80 acres of witness' land; he told witness about a piece of land in section 33, that he said Lampton had entered. A deed was afterwards gotten from Lampton for the 80 acres in section 33, but was given up, it was not obtained with the witness' consent; he knew something about it having been obtained; he did not have suit brought against the Foreman for possession. His attorney did it, he knew something about it.

R. D. MEANS testified, that he had lived in the southwest part of Pettis county since 1832; Mark L. Means was a second cousin of the witness. Witness had known him 25 or 30 years; he died during the war; had been an officer in the land office at Warsaw. The certificate to the plat in the recorder's office of Pettis county was in his hand writing. (It was then admitted that the plat and the certificate and signature thereto were in the hand writing of Mark L. Means, Register of the land office at Warsaw.) Witness did not remember when M. L. Means went into office, but he was there in 1858. Witness had entered a great deal of land at that office for himself and others; lived a mile and a half from the land in controversy in 1855 and 1856. When people came in

there to enter land, they often came to witness, and he was at the land office two or three dozen times a year. His father was one of the first settlers, and was there before the land was surveyed by the government. Witness carried a flag while the government was surveying there, and helped to survey the land in controversy. This was in 1830, or along there. He knew every piece of land that was entered in that neighborhood. When he went to the office at Warsaw he would look to see if any new land had been entered. When a man entered land they entered it on the plat book by writing the name across the plat book, and you could tell by looking at the plat book whether a piece of land was vacant or not. Witness knew the land in controversy from the time it was surveyed by the government until it was entered, and had known it ever since; he first met M. M. Lampton in Georgetown, (county seat of Pettis county at that time) in the fall of 1855. He inquired of witness about land, and witness told him that there was good vacant land in his neighborhood. The second day after that Lampton went to witness' house and witness showed him the land he had told him of and he was pleased with it. Lampton came back a second time and they went over the land, and witness went with him to Warsaw and he entered some land, at that time he entered the N. W. ¼ of 33 and the N. ½ or the N. E. ¼ of 32; Lampton then went to Kentucky, and came back in the spring of 1856, and he and witness again went to the land office and Lampton entered some more land, —a row of forties south of that formerly entered, and one forty south of the land in dispute. Witness remembered Lampton's entry of the N. E. of the S. W. of 33 that was the last 40 he entered; about July 1856. After Lampton had made his entries in the spring of 1856 there was a large body of vacant land on the west of his entries between him and a

man named Hammons, and it was understood between them that they would enter all of that land. A man by the name of Smoot, from Illinois, came in and looked around a day or two and went to the land office, and came back and said he had entered this west ½ of the N. E. of 32 in controversy. Lampton had before entered the 40 south of it, and thought no one would take this for awhile, and was scared when he thought Smoot had entered it. He and witness went to the land office that night, got there about daylight, met Marvin, the register, and Lampton said he supposed Smoot had entered his land, they went to the land office books and found it was not entered; Lampton then entered it, the 80 acres in controversy. Witness saw the plat book and that the land was vacant; Lampton entered it and got the certificate; they went home and Lampton and Hammons compared numbers, and the next night they went down with Hammons and he entered all in the section lying west of Lampton in that section; there was a duplicate for this land to Lampton. Witness frequently saw it. When Hammons came back from the land office Lampton got the surveyor of Henry county to survey his land. He made the survey from the certificates of entry, and witness carried the chain; this was only a short time after the entry, he surveyed Lampton's whole tract and did so from the papers; the surveyor is dead. Lampton built a house that spring and summer; his garden ran to or near the line of the 80 in dispute; he used to talk about the shape of his land, six forties in each section. He never entered the W. ½ of the N. E. of 33; he claimed his land was a mile one way and three-quarters the other; he lived there until he sold to Mansur; Lampton improved 60 or 80 acres of the whole tract, and fenced part of the 80 in controversy next to his house. Mansur bought the land and moved there. Witness had not seen the certificate since

Williams made the survey; Lampton lived with witness while building his house, and frequently had his papers out, and prided himself and talked about the shape of his land. Mansur sold the land to Swisher. When Lampton went to the land office he had gold with which to make the entry of the 80 acres in controversy; Marvin proposed to sell him a land warrant, and Lampton paid Marvin the money and Marvin used the warrant to enter the land with, and Lampton signed an application in blank which Marvin said he would fill up. Witness was possitive and did not think he could be mistaken about the certificate being for the land in controversy. He never heard Lampton say a word about entering the W. ½ of the N. E. of 33, he did not want to go as far east as he had already gone with his entries. Witness had never heard anything about Lampton entering land in the N. E. of 33, until he heard it from Sensenderfer.

On cross examination this witness said that he could not state exactly but thought Lampton had entered the land in dispute in May or June 1856. Lampton's first entry was the E. ½ N. E. 32 and the N. W. 33, in the fall of 1855. Witness was not sure that the land in dispute was his last entry, thought he had entered N. E. S. W. 33 a short time after that in dispute. He entered the N. W. S. E. 32 in April 1856. Marvin at first told Lampton he thought Smoot had entered his land and then looked and said he had not. Witness didn't see the application except that Lampton signed it and Marvin said he would fill it up. Lampton signed it and Marvin said he would vouch for the papers. Witness didn't read the application and don't know whether it was filled up or not when Lamption signed it; Marvin said he would fill it up. Witness knew one A. C. Clark, but did not recollect of being on the W. ½ N. E. 33 with him, nor of meeting Clark at the land office when witness and Lampton were there. Wit-

ness had helped to survey section 33 in the government survey, and had since helped to survey a great deal of land in that neighborhood from time to time. Did not recollect Lampton saying he thought of entering the W. ½ N. E. of 33, because there was water on it. There is, in fact, water on it, but the main water was on the N. W. ¼ of 33, and that Lampton had already entered; there is none on the W. ½ N. E. of 32. If witness should see the application and it called for the land in 33, it would not change his opinion; he would still say that Lampton had entered that in 32.

M. M. LAMPTON testified: That he was 62 years old, had moved from Kentucky to Pettis county in April, 1856; first came here in the fall of 1855, met R. D. Means in Georgetown and went to his house. Means went with him to the land office, in the fall of 1855, and he then entered 240 acres, in section 32 and 33, all lying in a body. Could not give the numbers; he afterward entered other land; could not say now how it lay. He entered some south of the first. He came back again in April, 1856. Means was with him when he made all his entries. He entered the 80 in controversy in June 1856. This 80 was understood by the neighbors to be left for him. A man named Smoot had been to the office at Warsaw and thought he had entered this land, and wanted to sell it to the witness; Means and witness went to Warsaw and Marvin the Register examined the books and told witness that Smoot had not entered it; they then had some talk about a land warrant; witness gave Marvin the gold and he said he would fix it all right. Witness depended on him and signed a blank application and left it with him to fill up, and he said he would fill it up all right; he gave witness a certificate for the land in dispute. Witness told Marvin that Smoot had entered a 40 which witness wanted. Marvin said

he thought Smoot would take up his entry, and if he did witness could have it. The next month he went there and entered the other 40, the last he entered; that put his land in an "oblong square," three quarters of a mile north and south and one mile east and west. The land is near the corners of Pettis, Benton and Henry counties. Williams, surveyor of Henry county, surveyed all of witness' land, including the land in dispute, and established corners from the certificates of entry. Means and Nelson assisted in the survey. Witness built a house on his land about 75 or 100 yards from the land in dispute and fenced the part of the 80 in dispute nearest his house. He lived there from August 1856 until he sold to Mansur in 1859 or 1860; took a mortgage from Mansur for part of the purchase money. Witness had also mortgaged the land before that; Mansur went into possession. When witness sold to Mansur the deed and mortgage were drawn from the certificates of entry, which were then turned over to Mansur. "Sensenderfer came to see me about this 80; I told him that if it were any other 80 in the tract, I might think he had some chance, but I was most particular about this 80, for I got it to square my land, and it was near my garden. I never got a patent to any of the land I entered. I paid taxes on the land until I sold it."

On cross examination witness stated that he did not tell Sensenderfer that it must have been a mistake on his part, or anything of that kind. His recollection was that the paper he signed at Warsaw was a printed blank; he talked frequently with Sensenderfer and did not tell him that he had made a mistake, or that it was his mistake. After Sensender made his claim, he made a quit claim deed to the W. ½ N. E. 33 so that Swisher would not hold him on his warranty to Mansur for the land. He knew that he wanted to enter the land in dispute; would not have had the land in 33;

he never entered the land in 33, never intended to enter it and never claimed it. The paper he signed in blank at Warsaw was the application; didn't authorize Marvin to fill the application with anything. Signed the blank and Marvin said he would fill it up and fix it all right.

The plaintiff then read the despositions of Thomas O' Geary, Gustave Reiche, George Ritchey, John N. Gott, (Printed record, 22 to 30.) Showing conversations with Sensenderfer, and explaining the character of entries on the records in the Boonville Land Office and Sensenderfer's work in connection therewith.

This evidence was set forth in detail in the preceding case of Sensenderfer vs. Kemp. The portion of it peculiar to this case, shows that on page 11 of the tract book at the Boonville office the following entries were made: M. M. Lampton made a cash entry on November 16th, 1855, of the E. ½ N. E. 32 and N. W. ¼ 33, T. 44, R. 23; on April 26, 1856, M. M. Lampton made cash entry of N E, S E, 32 and N W, S W, and N W, S E, and N E, S E, 33; on June 17th, 1856, M. M. Lampton located M. L. W. No. 26,384, Act of 1855, on the W. ½ N. E. 33, T. 44, R. 23, (which it is claimed was a mistake and should have been in section 32;) on July 5th, 1856, M. M. Lampton made a cash entry of N E, S W, 33, 44, 23; on November 21st, 1856, Benjamin W. Brice located M. L. W. No. 40,872, Act of 1855, on the W. ½ of the N. E. 33, 44-23; (being the same land which it appeared, in the line immediately above the entry of Brice's location, had been located by Lampton in June preceding.) A copy of that portion of the tract book showing the above entries will be found on page 27 of the printed record. There is also attached to the deposition of Reiche a letter from the Commissioner of the land office, dated Washington, November 15th, 1872; (after the controversy had arisen over Sensender-

fer's claim,) addressed to the Register and Receiver at Boonville, Mo., calling attention to the conflict between the locations of Brice and Lampton on the W. ½ N. E. 33.

The plaintiff then offered in evidence the patent from the United States to Benjamin W. Brice to the W. ½ N. E. ¼ section 33, T. 44, R. 23, dated November 10th, 1859.

Also the plat of entries of land in Pettis county, certified on July 1st, 1858, by Mark L. Means, Register of the land office at Warsaw, Mo., as containing "all the territory in Pettis county, Missouri, with the names of the original purchasers endorsed on each tract purchased at said land office, as appears by the original plat book and records in said office, and that said plats are correctly transcribed with the endorsements thereon."

It was admitted by the defendant that said certificate was written by Means, the Register of the land office, and that said map since 1858 had been kept in the proper clerk's office of Pettis county until the creation of the office of recorder, in whose office it has since been kept, and that it has, since 1858, been used and referred to as evidence of the source of title to government land in said county.

It was further admitted that the land office at Warsaw, with its records and contents, was destroyed by fire in 1862 The defendant objected to its admission because it is not certified as required and because it does not purport to be a copy of any record, memoranda or paper, in any United States Land Office, and because the number of acres and number of survey are not given.

A copy of that portion of the certified plat showing sections 31, 32 and 33, T. 44, R. 23, will be found opposite page 31 of the printed record.

Deeds affecting the land in controversy were then read in evidence as follows:

Mortgage from Lampton to Caldwell, dated January 13th, 1858, recorded January 20th, 1858.

Deed of trust from Lampton and wife to Robert Allen, trustee for Bushnell and Tutt, dated December 28th, 1858, recorded January 3d, 1859.

Warranty deed from Lampton and wife to Mansur, dated October 11th, 1860, recorded October 13th, 1860.

Mortgage from Mansur to Lampton, dated and recorded same as preceeding deed.

Warranty deed from Mansur and wife to Swisher, dated October 11th, 1865, recorded January 27th, 1866.

Plaintiff then read a certified copy from the office of the Register of Lands of Missouri, of a report of entries made at the land office at Warsaw, showing that M. M. Lampton had entered the W. ½ of the N. E. ¼ of Section 32, T. 44, R. 23, and which was certified as follows:

Land Office, Warsaw, Mo., Dec. 1856.

I herby certify that the attached two hundred and thirty-eight pages contain a true abstract of the lands sold for cash and located with warrants at this office, between the first day of November, 1855 and the 15th day of November, 1856, both days inclusive. A. C. MARVIN,

Register.

Also another copy of the same character from the office of the Register of Lands of Missouri, as follows:

"List of lands sold at the land office at Warsaw, Mo., from the 16th day of November, 1856, to the 15th day of November, 1857, inclusive.

Then follows: "B. W. Bruce, 80 acres, W. ½ of N. E. ¼ Section 33 T. 44, R. 23." To which is added a certificate in these words:

"Land Office, Warsaw Mo., Nov. 15, 1857."

I, M. L. Means, Register of land office of Warsaw, Mo., certify that the foregoing is a true list of lands sold at this office from the 15th day of November, 1856, to the 15th day of November, 1857, inclusive. M. L. MEANS.

Register.

Plaintiff introduced in evidence the tax book of Pettis county showing that the property in question was assessed to M. M. Lampton in 1857; that from 1860 to 1863 inclusive, the land was assessed to Mansur; in 1867 and 1868 to Lampton, and in 1869 and afterwards to Swisher; for the years not mentioned there were either no assessments or the books could not be found. The tax books introduced in evidence showed that the taxes had been paid.

It was also shown that B. W. Brice who claimed to have entered the W. ½ N. E. 33 had died in Ohio in or prior to 1862, and that in the division of his estate, under his will, his daughter acquired the 80 acres in 33, and sold it to one Foreman in 1868, who then took possession of it.

The witness Means being recalled, further testified that in 1869 and 1870 there were no vacant lands unentered in that part of Pettis county; that he had kept a plat of that township until all the land was entered and marked it off as it was entered. He knew the land was all entered before the land office burned at Warsaw, from examination and from what the officers told him.

Plaintiff closed.

The defendant Sensenderfer then introduced in evidence a patent from the United States to himself for the west ½ of the N. W. ¼, section 32, T. 44, R. 23, dated January 10th, 1871.

He also read in evidence a certified copy of a patent from the United States to M. M. Lampton for the W. ½ N. E. ¼, Sec. 33, T. 44, R. 23, dated April 1st, 1859. (Lampton testified that he had never received any patent whatever.)

The defendant then read the letter from the General Land Office at Washington, dated May 22nd, 1855, addressed to Plattsburg, Mo., showing that the local land officers were in the habit of accepting applications signed in blank and afterwards filling them up, the letter of the Commissioner advised the Register at Plattsburg that he might, on request, do so, but that the applicant alone would be responsible for any errors.

Defendant also read a copy of a letter from the Commissioner of the General Land Office to John Montgomery, Jr., (then attorney for Swisher) replying to inquiries as to Lampton's entries, and stating that it appeared from the tract book abstract and application that Lampton had entered the W. ½ N. E. 33 and not 32, and that B. W. Brice had afterwards located a warrant on the above 80 acres in 33, but that Brice's location was invalid. This letter was dated November 15th, 1872, after the defendant Sensenderfer had set up his claim.

The defendant then read a copy of an application dated Land Office Warsaw, Mo., June 17th, 1856, signed by M. M. Lampton and attested by Marvin, Register and Holden, Receiver, which reads that Lampton located the W. ½ N. E. ¼, Sec. 33, 44,-23.

The defendant, Sensenderfer, testified as to his moving from St. Louis to Boonville, and of his having read a paper about "overlooked" tracts of land. He went to the land office and looked to see if he could find any such, he did find and enter some 30 or 40 tracts; he "entered it all blind," that is, he did not see it. When he entered the land in dis-

pute he knew nothing about it, except that the plats in the office showed it prairie; some two or three months afterwards in looking over the land office books, he found a double entry of the W. ½, N. E. of 33; he then wrote to his lawyer at Washington and got a reply, which was lost. He had never seen the land when he entered it. He was in Sedalia the first time in September, 1871, was a stranger; on Main street he went into a crowd and met Lampton and joined in the conversation; told Lampton he was looking after lands he had entered; told him the numbers, and Lampton said he had entered that land; he then wrote to Washington and informed himself; the next fall he went to see Swisher, and told him about his entry of this land and what Lampton had told him the year before, but that he, witness, had posted himself and was satisfied it was his land, and that Lampton's location was in 33. Lampton had previously told him that Swisher was the present owner and occupant of the land. He denied that he told Swisher that he would not enter vacant land, or that he had failed in business in St Louis, or that his business in Boonville was to look up mistakes in land entries, but told him he had "entered it blind." After the receipt of the letter to Montgomery he again talked with Lampton, who said he did not see how he made that mistake, but it seemed that he did make a mistake. Witness also denied the conversation testified to by O'Geary.

On cross examination he testified as to his dealings in real estate before going to Boonville, where he moved in August, 1870, and in a day or two went to the land office; he did so because, just before that, he had read in a paper that a congressman had noticed in the land office at Washington that a piece of land near DesMoine was vacant and had entered it and had make a good thing of it, and wit-

ness thought he might do the same. He went through the whole of the tract book of the Boonville office and found some 500,000 acres vacant; he spent nine-tenths of his time at the land office; when he found a piece vacant he would write to his attorney at Washington, and if he found it vacant there he would enter it. He wrote to Washington before he made this entry, for his attorney to see if it was vacant, and he replied that it was. This was one of his first entries; he wrote before he entered the land because he had learned from experience that there were some conflicts and mistakes in entries, and he wanted to know if this appeared vacant at Washington; after he found about the Lampton entry, he wrote to his attorney again, thinks he wrote in March, 1871, about the double entry; when he saw there was a double entry on the Brice land, he wrote to his attorney in Washington that that might prove a double entry, and it might conflict with his entry; that was before he got his patent to the land; he knew that Pettis county joined Cooper county and that there were railroads through Pettis county. He went through the books of all the entries in Pettis county, before he made any entries; he did not go to see the land until he got his patent, because it, he thought, was worth $1.25 an acre, any way; after he got his patent A. C. Widdicombe told him he thought he would find some conflict and he made no more entries until he went and saw what he had entered. When he made these entries he did not think it was necessary to look outside of the record; he made eight entries in Pettis county, five of them were canceled because of conflicting entries as shown by the records or when older patents were found; he first met A. C. Widdicombe when he went to Boonville. He was making entries also, did not think Widdicombe told him about the likelihood of conflict-

ing entries, until just before he went to Washington in 1871; he then investigated and made no more entries after that. He learned while making entries that the books were not entirely reliable; it was the talk in the office that those records were not entirely correct; he learned there of the burning of the Warsaw office and knew that the books at Boonville were copies made at Washington. He saw by the books that the land in Pettis county was about all taken many years before; thought these were overlooked tracts. His object in going to see the people was not to compromise with them. When he got his patents he went to see the lands and found the claimants. Swisher wanted to compromise with him and offered $5 per acre; he told Swisher that the land was worth $25. When he examined the tract book he counted the forties that were entered in each section and when he found 16 forties entered in a section he looked no farther; if he found less he looked for the vacant ones; he went to Neals with O'Geary in September, 1871, and went to Swisher's a year after. Can't say what his conversation with with O'Geary was, but was sure he did not say what O'Greary testified to; prior to Montgomery's getting the letter from the general land office, Lampton said he was sure he entered this land; after that he said he must be mistaken. He always claimed to have entered this land until 1874, when he got "weak-kneed" about it and then he said it seemed as if he had made a mistake, "I may have tried to get Swisher to go and get the piece in 33 and give up the piece in 32 to me." Did not notice the conflict in section 33 until two or three months after he had entered this land.

The defendant then read a deposition of A. C. Clark, presumably for the purpose of showing that Lampton intended to enter the W. ½ of the N. E. of 33 instead of 32; if such was the purpose it was a dismal failure. The deposi-

tion is found at pages 45 and 46 of the printed record. The substance of it is that in June 1856 the witness resided near Windsor, Missouri, and knew Lampton, and that in May or June 1856, Lampton and Means went to Warsaw to enter land in section 32, T. 44, R. 23, as he stated to witness after his return. Witness lived about 4 miles from section 32, and was acquainted with the land in sections 32 and 33. In April 1856, Lampton in company with Means, the witness and several others did view the land in 33, and Lampton said he liked it and spoke of entering it. The next day Lampton and witness were in the land office at Warsaw and Lampton made an entry, but witness did not know what land he entered; at the time before referred to, Lampton and the others viewed the land in sections 32, 33, 28 and 29. Lampton viewed all the lands in section 32, he having formerly entered land there. There were some pools of water on the W. ½ N. E. 33; did not think there was any water of consequence on the W. ½ N. E. 32. Lampton said it would make a nice stock farm, but said nothing of entering it for himself on account of the water. Witness remembered nothing else that had been said by Lampton.

It was then admitted by the plaintiff Swisher that about 1873 Lampton conveyed to him by quit claim the W. ½ N. E. 33 and that soon after a suit in ejectment was brought against one Foreman for possession of that land, and was afterwards dismissed.

The defendant closed.

The plaintiff in rebuttal called John Montgomery, who testified that when Sensenderfer began the suit against Swisher, the latter employed witness as attorney, and witness wrote to the Land Office at Washington and received the letter read in evidence. Witness also got a copy of the

patent to Lampton for the W. ½ N. E. 33, and he then procured the quit claim deed from Lampton to Swisher, and instituted the suit against Foreman; he did this as a precaution to protect Swisher, because the statute of limitation was about to become a bar. He afterwards found that Sinnet had the Brice patent and he dismissed the suit against Foreman, because after examination he saw he could not maintain that suit, but thought they could the one against Sensenderfer; did not think Swisher knew about this until after it was done. "Then he approved it, as he deferred to my office and action as his attorney. I never showed the Washington letter to Lampton, he always pretended that he had no claim to the Brice 80, the W. ½ N. E. 33, and that he had not entered that 80."

This was all the evidence.

The finding and decree was for Swisher as before stated.

GEO. P. B. JACKSON,

FOR DEFENDANTS IN ERROR.

POINTS AND AUTHORITIES.

I.

The Circuit Court of Pettis county had jurisdiction to determine the issues presented in this case and to render the decree which it did.

The action of the officers of the land office in permitting the plaintiff in error, Sensenderfer, to locate his warrant upon and in granting him a patent to the land in controversy was not conclusive upon the rights of the defendants nor of any issue raised in this case.

No such isues as are here presented were ever before or passed upon by any officer in the land department; no notice of any kind was ever given to the defendants in error or to their ancestors in title, nor did any of them ever have any opportunity to present their claims or resist that of Sensenderfer.

Garland vs. Wynn, 20 How., 6.
Lindsey vs. Hawes 2 Black, 554.
Johnson vs. Towsley, 13 Wall., 72.
Lytle vs. Arkansas, 22 How., 192.
Carroll vs. Safford, 3 How., 460.
Heddicomb & Children, 124 U.S. 429.

II.

The finding and decree involve two questions:

First—did Lampton enter the land in controversy in 1856? and, second—did Sensenderfer have notice of that fact, when he claims to have entered the same land in 1870?

FIRST.

The testimony of Means and Lampton is very emphatic, that Lampton did enter that particular tract. They give the details, which render it certain that they cannot be mistaken.

They both remember the contents of the certificate from which this land was surveyed soon after the entry, and from which the subsequent conveyances were drawn. Mr. Means, not long afterwards, examined the records in the land office at Warsaw, and found that this particular eighty was recorded as entered. The certified copies, or abstracts, of that record, sent, one to Pettis county and the other to the State Register of Lands, confirm these witnesses, by certifying this land to have been entered by Lampton.

Whatever mistake there was, was made by the officers of the local office at Warsaw, in filling up the application.

How such mistakes could easily be made, how they could be transmitted to the General Land office, and how, after the burning of the Warsaw office, they were repeated in the copies furnished from the General Office to the new local office at Boonville, was all fully explained in the brief filed in the case of this same plaintiff in error against Kemp, *et al*, now pending in this court, and it is not necessary to repeat it here.

This case is so similial to that one, that we respectfully refer to the breif submitted by the respondents in that case. The certified copies furnished to Pettis county, and to the State Register of Lands, from the Warsaw land office, were competent evidence.

Hedrick vs. Hughes, 15 Wall, 123.

The equitale title passed from the government upon the granting of the certificate, and the United States held the legal title in trust for the purchaser.

Wickersham vs. Woolbeck, 57 Mo., 61.
Carrol vs. Safford, 3 How., 460.
Widdicombe vs. Childers, 84 Mo., 384.

A court of chancery has the same power to render a decree concerning the title in such case, as in any other. Same cases.

SECOND.

The appellant had notice of respondent's title. The registry law does not apply to or affect the title from the government.

R. S., Mo., 1879, Secs. 691, 692 and 693.

"SEC. 691. Every instrument in writing that conveys any real estate, or whereby any real estate may be affected, in law or equity, proved or acknowledged, and certified in the manner herein before prescribed, shall be recorded in the office of the Recorder of the county in which such real estate is situated."

"SEC. 692. Every such instrument, certified and recorded in the manner herein before described shall, from the time of filing the same with the Recorder for record, impart notice to all persons of the contents thereof; and all subsequent purchasers and mortgagees shall be deemed, in law and equity, to purchase with notice."

"SEC. 693. No such instrument in writing shall be valid, except between the parties thereto, and such as have actual notice thereof, until the same shall be deposited with the Recorder for record."

These sections clearly apply only to deeds between individuals, executed under the formalities prescribed by the State Statute, and have no reference to evidences of title, either legal or equitable, issued by the United States.

The common law applies, and the possession of Swisher was notice to the world concerning the entry from the government.

Buck vs. Holloway, 2 J. J. Marsh., 180.
Bartlett vs. Glascock, 4 Mo., 62.
Landes vs. Brant, 10 How., 375-6.
Widdecombe vs. Childers *et al., supra.*

But beyond that, the evidence leaves no doubt but Sensenderfer had actual notice. He was engaged in hunting up just such mistakes as occured in the actions of the officers of the land office, subsequent to Lampton's entry; his purpose was to take advantage of them, and if he did not know all the particulars—if he had not ascertained the name of the actual owner—it was because he closed his eyes to the truth; because, being conscious of the means of information, he purposely refused to follow it to its legimate conclusion, and that is notice.

Rhodes vs. Outcalt, 40 Mo., 370.
Stephenson vs. Smith, 70 Mo., 616-7.
Speck vs. Riggin, 40 Mo., 405.
Widdicombe vs. Childers, *et al., Supra.*
Wade on Notice, par. 279.
2 Pomeroy, Eq., Jur. Sec. 597.

III.

There is nothing in the point made by appellant that respondent's cause of action is barred by limitation. Limitation never begins to run until a cause of action has accrued, which did not occur in this instance until Sensenderfer claimed to have entered the land and set up the title.

But why should the actual occupant of land be hunting up claimants in order to sue them? Who is to say that they

will ever attempt to assert their pretended claims? Upon appellant's theory, a man with some pretended right to a piece of land in the possession of another, or even the legal title, which could not be enforced in the courts to-day, has only to lie in wait ten years, and then, that which was worthless, by silence and delay has become a title superior to that of him who has, all the time, been in the actual possession of the land, under an unquestionable equity, if not more. By the failure of the party out of possession to assert his claim, the party in possession is barred of his equities and defences. That is not the law.

It is not considered necessary to add anything by way of argument here, owing to the similarity between this case and that of the plaintiff in error against Kemp, in which case the questions here involved were discussed at length.

GEO. P. B. JACKSON,

For Defendants in Error.